

No. 14901

United States
Court of Appeals
for the Ninth Circuit

JOHN PIERCE,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 248)

Petition to Review an Order of the
Securities and Exchange Commission

FILED

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—4-27-56

MAY -7 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Washington 25, D. C.

Form BD

Under the Securities Exchange Act of 1934

FORM OF APPLICATION FOR REGISTRATION AS A BROKER AND DEALER OR TO AMEND OR SUPPLEMENT SUCH AN APPLICATION

JOHN PIERCE

(Name of Registrant—see Definitions on last page)

1021 Bracken Avenue, Las Vegas, Nevada.

(Principal Place of Business, Street Address, City, State)

(Check appropriate box to indicate purpose for which form is being used:)

- A. This is an Application for Registration as a Broker-Dealer Filed by the Broker-Dealer Named Above.

Instructions: If (1) such broker-dealer is a partnership succeeding to and continuing the business of a broker-dealer partnership registered when this application is filed and (2) the predecessor partnership has filed its application or supplement to such application on this form—then registrant shall furnish only such information as is necessary to correct the information contained in the application of the

predecessor, and the supplements and amendments thereto, which shall be deemed to be incorporated in this application by reference. Unless both conditions (1) and (2) are met, all items in this form should be answered in full.

* * *

1. (a) Name under which business is to be conducted:

John Pierce

- (b) If registrant is the successor to the business of another broker or dealer, give the name and address of the predecessor and the date of succession:

[Blank.]

- (c) Form of organization (sole proprietorship, corporation, partnership or an unincorporated organization or association which is not a partnership):

Sole proprietorship

2. If sole proprietorship, furnish the full name of proprietor, and his residence address:

Pohn Pierce, 1021 Bracken Avenue, Las Vegas, Nevada.

3. If a corporation, furnish

- (a) the state and date of incorporation:

- (b) the full name and title of each officer and director, and of every other person occupying a similar status or performing similar functions:

[Blank.]

(c) the full name of each person who, directly or indirectly, is the beneficial owner of 10% or more of any class of any equity securities of such corporation, indicating the class of such equity securities:

[Blank.]

4. If a partnership, furnish the full name of each partner (special or limited partners should be so designated) and the residence address of each general partner who does not reside within the United States:

[Blank.]

5. If an unincorporated organization or association which is not a partnership, furnish the full name of each "managing agent" of such organization or association and the residence address of each such person who does not reside within the United States: (See definition of "managing agent" on last page.)

[Blank.]

6. Does any person not named in Items 2 to 5, inclusive, directly or indirectly control the business of registrant?

If so, furnish the full name and business address of each such person and the residence address of any such person who does not reside in the United States;

[Yes or No]: No.

7. For each individual named in Items 2 to 6, inclusive, attach "Answer to Item 7" showing all

connections within the past ten years with any broker or dealer other than the registrant or any predecessor, and the nature and period of each such connection.

[Blank.]

8. State whether the registrant, any person named in Items 2 to 6 inclusive, any salesman or other employee, or any other person directly or indirectly controlling or controlled by registrant:

(a) Has been convicted, within ten years, of any felony or misdemeanor involving the purchase or sale of any security or arising out of the conduct of the business of a broker or dealer.

[Yes or No]: No.

(b) Is permanently or temporarily enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security:

[Yes or No]: No.

(c) Has been found by the Commission to have violated any provision of the Securities Act of 1933 or the Securities Exchange Act of 1934, or any rule or regulation under either of said Acts.

[Yes or No]: No.

9. Registrant consents that notice of any proceeding before the Commission in connection with the application or with registration thereunder may be given by sending notice by registered mail or

confirmed telegram to the person named below, at the address given:

Name: Pohn Pierce.

Address: 1021 Bracken Avenue,
Las Vegas, Nevada.

This Form Should Be Executed by the Registrant (see definitions) Except Where B on Page 1 Has Been Checked (in which case it should be executed by the broker-dealer predecessor making an application for registration on behalf of a successor broker-dealer to be formed or organized.)

All statements contained herein are true and correct to the best knowledge and belief of the persons executing this form.

Dated at Las Vegas, Nevada, the 26 day of October, 1954.

(For sole proprietor):

/s/ JOHN PIERCE,
(Proprietor)

* * *

Answer to Item 7

Salesman With Lester L. LaFortune
Las Vegas, Nevada—1950-1952

Financial Statement of John Pierce
October 26, 1954

Assets

Cash	\$ 3,000.00
House and Furniture	
1021 Bracken, Las Vegas	20,000.00
Cadillae Automobile	5,500.00
Jewelry & Miscellaneous	3,500.00
Showboat Hotel, Inc. Stock	2,100.00

Total Assets	\$34,100.00
Liabilities	
Mortgage on house	\$ 9,000.00
Mortgage on car	1,500.00
Miscellaneous	500.00

Total Liabilities	11,000.00
Net Worth	\$23,100.00

State of California,
County of Clark—ss.

John Pierce, being sworn, deposes and says: The foregoing financial statement is true and correct to the best of my knowledge and belief.

/s/ JOHN PIERCE.

Subscribed and sworn to before me this 26th day of October, 1954.

(Seal) /s/ EDWIN J. DOTSON,
Notary Public in and for
Said County and State.

My commission expires 2/19/54.

Received Oct. 28, 1954.

United States of America Before the
Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 5th day of November, 1954.

In the matter of

JOHN PIERCE, 1021 Bracken Avenue, Las Vegas,
Nevada.

ORDER FOR PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934.

I.

The Commission's public official files disclose that John Pierce, a sole proprietor, hereinafter sometimes called applicant, filed an application with the Commission on October 28, 1954, for registration as a broker and dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934. Registration has not yet become effective.

II.

Members of its staff have reported to the Commission information obtained as a result of an investigation which tends to show that:

- A. Since on or about January 1, 1951, applicant, as a broker and dealer has made use of the mails and the means and instrumentalities of interstate

commerce to effect transactions in, and to induce the purchase and sale of securities, otherwise than on a national securities exchange, when no registration as a broker and dealer was in effect as to applicant under the provisions of Section 15(b) of the Securities Exchange Act of 1934.

B. During the period from approximately October 1, 1951, to the date hereof, applicant sold for and purchased for certain persons, and applicant sold to and purchased from certain persons certain securities; and in connection with the purchases and sales heretofore mentioned made false and misleading statements of material facts and omitted to state material facts and employed schemes, artifices and devices in that:

(a) (1) During the month of February, 1952, applicant solicited and induced a certain person to entrust to applicant for the purposes of sale 1,000 units consisting of one share each of the Preferred and Common stock of Las Vegas Thoroughbred Racing Association, a corporation; and falsely and fraudulently represented that he, the applicant, would sell 200 units thereof at a price of \$3.00 per unit and 800 units thereof at a price of \$4.00 per unit and in response to this solicitation and inducement said person did, in the month of February, 1952, deposit with and entrust to applicant said 1,000 units of the Preferred and Common stock of Las Vegas Thoroughbred Racing Association, endorsed for transfer, for the uses and purposes aforesaid.

(a) (2) " " Thereafter in March, 1952, applicant falsely and fraudulently represented to said person that applicant had caused 200 of said units to be sold at a price of \$3.00 per unit and that applicant's check in the sum of \$600.00 then and there delivered to said person represented the entire proceeds of said sale.

(a) (3) Thereafter in May, 1952, applicant falsely and fraudulently represented to said person that he had caused 200 additional units to be sold at a price of \$4.00 per unit and that applicant's check in the sum of \$800.00 then and there delivered to said person represented the entire proceeds of said sale. Said check was dishonored by the drawee and returned through intermediary endorsers to said person.

(a) (4) Thereafter applicant falsely and fraudulently represented to said person that he, the applicant, had been unable to complete the sale referred to in the preceding sub-paragraph for the reason that it was not then possible to effect transfers of the shares on the books of the corporation.

(a) (5) The representations and inducements made by applicant described in sub-paragraph (a) (1) of paragraph B were false and fraudulent in that at the time that they were made, applicant knew and failed to disclose to said person that applicant could sell and intended to sell all of said units at a price greatly in excess of \$3.00 or \$4.00 per share, to wit, the sum of \$6.00 per share, and

sons paid the purchase price of \$5,500 and received delivery from applicant of a certificate for 1,100 shares of said common stock and in connection with such transaction applicant made certain false and misleading representations and omitted to disclose certain material facts concerning, among other things, the source of such stock and the then current market price of such stock.

C. Applicant effected, otherwise than on a national securities exchange, certain of the transactions hereinabove mentioned in paragraph B of Section II hereof.

D. Applicant used the mails, the means and instrumentalities of interstate commerce, and the means and instruments of transportation and communication in interstate commerce in effecting certain of the transactions and in the purchase and sale of securities as hereinabove set forth in paragraph B of Section II hereof.

III.

The information reported to the Commission by members of its staff, as set forth in Section II hereof, tends, if true, to show that:

A. Applicant violated Section 17(a) of the Securities Act of 1933, in that in the sale of securities by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, applicant employed devices, schemes and artifices to defraud and obtained money and property by means of untrue statements

of material facts and omissions to state material facts necessary in or to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, and a course of business, which would and did operate as a fraud and deceit upon the purchasers.

B. Applicant violated Section 15(a) of the Securities Exchange Act of 1934, in that as a broker or dealer, applicant made use of the mails and the means and instrumentalities of interstate commerce to effect transactions in, and to induce the purchase and sale of securities (other than exempted securities or commercial paper, bankers' acceptances, or commercial bills), otherwise than on a national securities exchange without being registered with this Commission in accordance with Section 15(b) of said Act.

C. Applicant violated Section 10(b) of the Securities Exchange Act of 1934, in that by use of means and instrumentalities of interstate commerce and of the mails in connection with the purchase and sale of securities applicant directly and indirectly employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in acts, practices and a course of business which would and did operate as

a fraud and deceit upon certain customers in contravention of Rule X-10B-5 prescribed by the Commission under said section.

D. Applicant violated Section 15(c)(1) of the Securities Exchange Act of 1934, in that applicant made use of the mails and means and instrumentalities of interstate commerce to effect transactions in and to induce the purchase and sale of securities, otherwise than on a national securities exchange, by means of manipulative, deceptive and other fraudulent devices and contrivances as defined by Rule X-1501-2(a) and (b) adopted by the Commission under said action.

IV.

The Commission having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

- (a) Whether the statements set forth in Section II heretofore are true;
- (b) whether applicant has wilfully violated Section 17(a) of the Securities Act of 1933;
- (c) whether applicant has wilfully violated Section 15(a) of the Securities Exchange Act of 1934;
- (d) whether applicant has wilfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule X-10B-5 prescribed by the Commission under said section;
- (e) whether applicant has wilfully violated Section 15(c)(1) of the Securities Exchange Act of

1934 and Rule X-1501-2(a) and (b) adopted by the Commission under said section;

(f) whether pursuant to Section 15(b) of the Securities Exchange Act of 1934 it is in the public interest to deny registration to applicant;

(g) whether pursuant to Section 15(b) of the Securities Exchange Act of 1934 it is necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of registration of applicant until final determination upon the question of denial.

V.

The Commission deeming it necessary and appropriate in the public interest and for the protection of investors that the effective date of registration of applicant be postponed for fifteen (15) days, It Is Ordered that the said effective date be and the same hereby is postponed until December 12, 1954.

It is further ordered that a hearing be held before Edward C. Johnson, Hearing Examiner, or such other hearing examiner as the Commission may designate, at 11:00 a.m., on November 22, 1954, at the office of the Securities and Exchange Commission, located at Room 1737, U.S. Post Office and Courthouse, 312 North Spring Street, Los Angeles 12, California on the question whether, pursuant to Section 15(b) of the Securities Exchange Act of 1934, it is necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of registration of the appli-

cant until final determination upon the question of denial. Upon the conclusion of the hearing on the question of such postponement, the Hearing Examiner shall forthwith transmit the record thereon to the Commission. Proposed findings and conclusions and supporting briefs hereon, pursuant to Rule IX(f) of the Rules of Practice, may be filed by the parties with the Secretary of the Commission on or before November 30, 1954. After receipt of the said record and of any proposed findings and supporting briefs, the Commission will issue its findings and opinion on the question of postponement forthwith, if it then finds such procedure necessary and permissible under Section 8(a) of the Administrative Procedure Act; and otherwise the Commission will make provisions for any further procedure which it finds necessary or appropriate.

It is further ordered that, following the above-mentioned hearing, a further hearing be held before the aforesaid Hearing Examiner for the purpose of taking evidence on the question of denial of registration to applicant. Upon the completion of the taking of evidence on these matters the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX(b) of the Rules of Practice, unless such decision is waived, and shall transmit the same with the record of the hearing to the Commission.

It is further ordered that this order and notice

shall be served on applicant personally or by registered mail forthwith.

In the absence of an appropriate waiver, no officer, or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that Section which might delay the effective date of any final Commission action.

By the Commission.

ORVAL L. DuBOIS,
Secretary.

United States of America

Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 1st day of December, A.D., 1954.

In the Matter of

JOHN PIERCE, 1021 Bracken Avenue, Las Vegas,
Nevada.

AMENDING ORDER

The Commission having, by order dated November 5, 1954, instituted proceedings pursuant to Sec-

tion 15(b) of the Securities Exchange Act of 1934, in the above-entitled matter and having, by order dated November 24, 1954, amended Section II of said order;

The Division of Trading and Exchanges having filed a motion that Sections II, III and IV of said order be amended;

It appearing to the Commission that members of its staff have information which tends to establish the alleged facts referred to in such proposed amendments;

It is ordered that Section II of said order, as amended, be, and the same hereby is, amended by adding thereto Paragraph N to read as follows:

E. As a document supplemental to his application for registration, referred to in Section I of said order, applicant filed a statement of financial condition which is false and misleading with respect to applicant's liabilities in that said statement stated that applicant's liabilities were:

Mortgage on home.....	\$ 9,000
Mortgage on car.....	1,500
Misc.	500
	<hr/>
	\$11,000

when, in fact, at the time of the filing of said application and said financial statement, applicant had, in fact, other liabilities in an amount in excess of \$3,000.

It is further ordered that Section III of said order be amended to include Paragraph E to read as follows:

E. Applicant violated Section 15(b) of the Securities Exchange Act of 1934, and Rule X-15B-8 adopted by the Commission under such section in that he wilfully made in his statement of financial condition filed with the application for registration false and misleading statements with respect to his liabilities.

It is further ordered that Section IV of said order be amended to include Paragraphs (h) and (i) to read as follows:

(h) Whether applicant in the statement of financial condition filed with his application for registration has wilfully made any statement which at the time and in the light of the circumstances under which it was made was false and misleading with respect to any material facts;

(i) whether applicant has wilfully violated Section 15(b) of the Securities Exchange Act of 1934, and Rule X-15B-8 prescribed by the Commission under said section.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

United States of America Before the Securities
and Exchange Commission

(Copy)

In the Matter of

JOHN PIERCE, 1021 Bracken Avenue, Las Vegas,
Nevada.

RESPONDENT'S PETITION FOR REHEAR-
ING OF THE COMMISSION'S FINDINGS
AND OPINION

Respondent John Pierce respectfully petitions the Commission to grant a rehearing with respect to the Findings and Opinion dated August 16, 1955, which it has adopted and to adopt, in lieu thereof, the Recommended Decision of the Hearing Examiner herein dated February 8, 1955. Respondent also requests that the Commission grant him oral argument on this petition for rehearing.

The grounds for the petition for rehearing are:

I.

The opinion adopted by the Commission misstates the facts developed in the record; disregards the findings of the Hearing Examiner based on conflicting evidence; and is not supported by the evidence.

II.

The public interest does not require denial of respondent's registration. He has already been punished heavily for his past failure to register as a broker-dealer.

A.

The Hayward Transaction

The Hearing Examiner who saw the witnesses and heard the evidence devoted 13½ pages of his Recommended Decision to a careful review of the facts of this transaction. He found that the charges of fraud "have not been proven." (R.D.* P. 23) He found the testimony "contradictory in part and confusing and indecisive in other parts." (R.D. p 23)

The opinion adopted by the Commission discusses the Hayward transaction in a mere 2 pages. (The testimony of Hayward himself covered 73 pages of the Transcript and other witnesses also testified about his transaction.) The Opinion adopted by the Commission doesn't mention the findings of the Hearing Examiner nor the evidence supporting his findings. The Opinion adopted by the Commission creates a delusive appearance of certainty by a combination of suppressions and misstatements, as follows:

On page 5 of the Commission's Opinion it is stated in effect that early in 1952 Hayward asked Pierce to try and sell his stock for \$5.00. The Hear-

*Explanation of abbreviations:

R.D. Recommended Decision of Hearing Examiner, February 8, 1955.

Tr. Transcript of hearing before Hearing Examiner.

C.O. Commission's Opinion dated August 16, 1955.

ing Examiner placed this conversation as prior to January 1952. (R.D. p. 12) Actually Hayward testified (correctly we believe)

"Dates don't mean a great deal to me, that long ago." (Tr. p. 55.)

Consequently, efforts to fix precisely the dates of various verbal understandings cannot succeed if attention is paid to the actual testimony.

Furthermore the picture is distorted because the opinion omits Hayward's testimony that previously Pierce at one time told him he could sell and make a profit and Hayward declined to sell. (Tr. p. 56, 93, 102, 121)

2. The opinion adopted by the Commission states (C.O. p. 6):

"Mr. H. had no independent knowledge with respect to the price of the Racing Association units and relied entirely upon applicant's representations as to their sale value."

It is the opinion of Respondent's Counsel that this statement wouldn't have been accepted by the Commission if the Commission had been familiar, as the Hearing Examiner was, with the record.

Hayward testified (Tr. p. 107-108) that prior to his decision to sell he visited the track "several times" "I am not a beginner; that is my business. I am around construction all the time * * *"

Hayward testified, that he conferred with "Mr. Smoot and Mr. John La Fortune" as well as with

Mr. Pierce. (Tr. p. 108). Smoot was the first president and promoter of the track. (Tr. p. 432) La Fortune was the underwriter. (Tr. p. 24, 608) A shrewd businessman who examined the work in progress and conferred with at least the president and underwriter as well as with Pierce cannot properly be said, as does the Commission's opinion, to have "relied entirely" on Pierce.

The unsupported statement in the Commission's Opinion that Hayward relied wholly on Pierce as to price appears contrary to the evidence. The finding of the Hearing Examiner that Hayward "drew his own opinion" (R.D. p. 13) and was a "competent, successful and shrewd businessman" (R.D. p. 23) is wholly correct.

3. The opinion adopted by the Commission flatly, and incorrectly, states (C.O. p. 6) that

"on the basis of applicant's representation that the \$5 price Mr. H. desired was not obtainable, the latter agreed to accept \$3 and \$4 for the units to be sold."

The facts, of course, aren't that simple.

Mr. Hayward testified:

"Q. Were these figures suggested by Mr. Pierce, what he could get for the stock?

"A. I don't recall, actually."

(Tr. p. 100)

4. The opinion adopted by the Commission states:

"applicant purported to act on Mr. H.'s behalf to secure for him the best price obtainable."

(C.O. p. 6)

This statement confirms our suspicion that the Commissioners have read neither the record, the Hearing Examiner's Recommended Decision, nor Respondent's Briefs. Otherwise we think that that statement would not have been adopted.

Mr. Hayward testified in answer to questions by Pierce's counsel as follows:

"Q. And the oral arrangement was that you were to get \$3 for 200 shares and \$4 for the balance, is that correct?

"A. That's right."

(Tr. p. 92)

The Hearing Examiner properly recognized that this was a decisive point. Consequently, to avoid any possibility of misunderstanding, he went over the same ground with sharply pointed questions.

"Q. Was that your understanding? You didn't care whether he sold them for \$10.00 or \$20.00 just so long as you got \$4.00, is that your testimony? That is all I want to know.

"A. Yes."

(Tr. p. 97)

If, as Hayward testified, he didn't care whether or not Pierce sold the shares for \$10 or \$20, it obviously couldn't be fraudulent for Pierce to sell the shares for \$6.

5. The Opinion adopted by the Commission ignores the fact that on over-the-counter shares it is proper for a broker-dealer to make a profit. The Commission knows that in over-the-counter stocks there is an "inside" price and an "outside" price. The price quoted by reputable dealers when one wishes to sell is different from the price quoted when one wishes to buy. And properly so. A dealer is entitled to earn a living. An expert from the Commission's staff testified as follows:

"Q. * * * reputable dealers may quote different prices for the same day, is that correct?

"A. Yes * * *"

(Tr. p. 471)

"Q. And that if one customer goes to the dealer and says he wants to buy and another customer comes in and says he wants to sell, and both tell the dealer that they want to transact their business at the market, the dealer will, nevertheless, and properly so, tell the people who are selling that the market is this and for the people who are buying, the market is this, is this correct?"

"A. That is correct, sir.

"Q. And when he tells the seller that the market price is such and such for a selling customer, he will be quoting a different figure from the figure which he gives to the customer who wants to buy at the market; is that your understanding?

"A. Yes, sir, it is."

(Tr. p. 473)

The testimony by the Commission's own expert confirms that Pierce could properly represent the market to be different for a person seeking to sell from what it would be for a person seeking to buy. Consequently even if he had quoted different prices to those seeking to sell from those who sought to buy, that is no evidence of fraud. Pierce, like the rest of us, is entitled to earn a living. And since Hayward expressly testified that Pierce was entitled to sell his stock for more than \$4 if he could, it is unjustifiable for the Commission to find fraud in what Hayward himself (who knew the understanding better than any of us) didn't regard as improper.

6. The opinion adopted by the Commission erroneously states (C.O. p. 7) that Pierce was fraudulent in his accounting to Hayward of the proceeds of the stock sales.

The correct view of this matter must be based on the entire relationship between the parties, not on selected fragments.

Hayward testified that prior to September, 1952, Pierce came to him and said he had sold his stock but would like a delay in paying.

"Q. And what did you say to that, Mr. Hayward?

"A. It was agreeable to me. I knew I would get it.

"Q. You were willing to grant him the delay, is that correct?

"A. Oh, yes."
(Tr. p. 76)

True, there was delay in paying Mr. Hayward. But he was willing to grant delay. Pierce, who knew Hayward well, was aware of that. Consequently, there was no fraud. Hayward regarded this as "gravy" (Tr. p. 69). He was willing that Pierce consider it a loan.

Consequently there was no proof of fraud.

Law

In the case of Universal Camera Co., vs. National Labor Relations Board 340 U.S. 474 (1951) the Supreme Court reversed a decision of the Board that was inconsistent with the findings of the Hearing Examiner (as here): In that case the Supreme Court stated:

"* * * on matters where the Hearing Commissioner having heard the evidence and seen the witnesses is best qualified to decide, the agency should be reluctant to disturb his findings unless error is clearly shown."

340 U.S. 474, 494

"The committee reports also made it clear that the sponsors of the legislation" [the Administrative Procedure Act] "thought the statute gave significance to the findings of the examiner."

340 U.S. 474, 496

“* * * the standard of proof specifically required of the Labor Board by the Taft-Hartley Act is the same as that to be exacted by the Courts in reviewing every administrative action subject to the Administrative Procedure Act.”

340 U.S. 474, 487

“The findings of an examiner are to be considered along with the consistency and inherent probability of testimony * * * The significance of his report, of course, depends largely on the importance of credibility in the particular case.”

340 U.S. 474, 496

On remand to the Circuit Court of Appeals the order of the Board (which overruled its own hearing officer—as here) was reversed. The Circuit Court of Appeals, speaking through the distinguished Learned Hand, C. J. stated:

“* * * we are not to be reluctant to insist that an examiner’s findings on veracity must not be overruled without a very substantial preponderance in the testimony as recorded.”

NLRB vs. Universal Camera 190 F (2)
429, 430.

There is another consideration. According to Professor Cooper of the University of Michigan Law School (consultant to one of the Hoover Commission Task Groups) it is the Securities and Exchange Commission practice for the Commission not

to read the record but to rely on a digest prepared by its staff. (41 American Bar Association Journal 707—August 1955). The professor comments that this practice:

“* * * illustrates the great difficulty that inheres where the members of the agency must rely on the judgment and judicial abilities of junior staff assistants to weigh the evidence.”

(41 American Bar Assn. Journal 707—
Aug. 1955, p. 708)

This practice, it seems, contravenes the high standards that:

“The one who decides must hear.”

Morgan, vs. U.S.

298 U.S. 468, 481 (1936)

Furthermore why not rely on the Hearing Examiner to weigh the evidence? He heard it and observed the demeanor of the witnesses. In our earlier brief we cited authority to show that he, and not junior staff assistants, is the proper person to “weigh the evidence.”

In the present case the opinion adopted by the Commission, so far as the Hayward transaction is concerned, ignores the conclusions of the learned Hearing Examiner as to veracity. It is contrary to the evidence and his findings. Consequently the S.E.C. opinion appears contrary to law. Respondent is entitled to a rehearing.

B.

Transactions With Other Persons. The Opinion adopted by the Commission finds that fraud was not proved in any of the other charges ventilated in extenso at the hearing. Respondent believes the statement in the Commission's Opinion of these transactions is couched in language that unfairly reflects on Respondent. However, charges are not evidence. The express finding that fraud was unproved, in each case, is a complete vindication of Respondent, as to these items. It was, however, an unfortunate burden on him to have to spend days clearing himself of unfounded charges.

C.

Financial Statement. The Hearing Examiner's Recommended Decision devoted 7 pages to an analysis of this point and concluded the omissions were inadvertent and not wilful. The Hearing Examiner heard the witnesses. He was in position to judge the credibility of respondent's explanation. The opinion adopted by the Commission devotes less than one full page to this topic. It ignored the principal facts found by the Hearing Examiner.

The financial statements as filed showed a net worth of \$23,100. If miscellaneous liabilities had been listed at \$3,500 instead of \$500 there could have been no complaint. At the hearing it also appeared, and the Hearing Examiner found, that Pierce had inadvertently omitted an asset worth

more than double the omitted liabilities. (R.D. p. 35 and 36)

Pierce carried no margin accounts. Consequently there was no requirement that he show any particular net worth.

The Hearing Examiner's conclusion that Pierce's net worth was at least as great as set forth in his financial statement is not disputed in the opinion adopted by the Commission. The fact that both assets and liabilities were omitted confirms the finding of the Hearing Examiner, who heard the testimony, that the omission was inadvertent (R.D. p. 38-39) The Commission's opinion in improperly overruling the Hearing Examiner on this matter of veracity, is contrary to law:

"* * * on matters where the Hearing Commission having heard the evidence and seen the witnesses, is best qualified to decide, the agency should be reluctant to disturb his findings unless error is clearly shown."

Universal Camera vs. NLRB, 340 U.S. 474, 494.

"we are not to be reluctant to insist that an examiner's findings on veracity must not be overruled without a very substantial preponderance in the testimony as recorded."

NLRB vs. Universal Camera 190 F (2) 429, 430.

Here the Hearing Examiner found in accordance with Pierce's testimony that the omission was inadvertent.

"Mr. Pierce, why didn't you include this lease as an asset?

The Witness: It was not intentional. It was inadvertent. The same thing goes for those personal obligations that I had. None of them were intentional."

(Tr. p. 580)

The examination of Pierce was searching. The Hearing Examiner's finding cannot properly be overruled unless error is "clearly shown" or "a very substantial preponderance in the testimony" against it. Neither test has been met. Consequently it was legally erroneous for the Commission to ignore the Hearing Examiner's finding on this point.

D.

Public Interest. Mr. Pierce testified (Tr. p. 570) that denial of registration would work a serious hardship on him:

"* * * in the years that I have been in Las Vegas, I have established a fairly good reputation and made some good contacts and there is no question that I can use my registration honestly and logically to make a permanent business of it."

"Q. And do you desire, at this time, to be registered and to comply with the applicable regulations of the Securities and Exchange Commission?

"A. Yes I do."

The Hearing Examiner, who heard the testimony, was impressed by Pierce's sincerity and found that:

"it would appear that Respondent has not only learned the error of his ways, but these proceedings have been lengthy and costly and furthermore, since his application for registration has been postponed for a considerable period of time as a result of these proceedings, I conclude that the public interest would not necessarily be served by the imposition of any additional penalty."

(R.D. p. 43)

The imposition of the drastic penalty of denial can properly rest only on the premise that such is necessary to protect the public from Pierce. But the record affirmatively shows that that is not necessary. The Commission investigated hundreds of his transactions. Only one—Hayward's—is now claimed to have been improper. And even there it is significant that both Hayward, the shrewd businessman who was a party to the transaction, and the learned Hearing Examiner who heard the testimony, both concluded that Pierce had not acted improperly. Since that time Pierce has had the penalty of these proceedings imposed on him. Consequently, it appears highly unlikely that such a transaction would occur in the future.

Looked at objectively we find but one possibly improper transaction out of several hundred investigated by the Commission.

That doesn't show a propensity to fraud. On the contrary. Furthermore, in view of the finding of the Hearing Examiner, who, unlike the Commissioners heard the witnesses and knows what the testimony actually was, there was no fraud even in that transaction.

Against such a background the imposition of more than a temporary suspension on account of the Hayward transaction would appear arbitrary and excessive.

Pierce's failure to register earlier was clearly wrong. But now he wants to correct that. He has already suffered a ten month's denial. He has been forced to incur substantial court costs. The odd thing is, of course, that he was unmolested until, acting on the advice of present counsel, he sought to register and regularize his activities. Now he has the book thrown at him. That appears unjustified.

Based on past experience, the public won't be injured by Pierce's registration becoming effective because, in the past, he hasn't injured the public with the single possible exception of the disputable Hayward transaction. Consequently the record affirmatively shows, as the Hearing Examiner found that:

"the public interest will be served by permitting this application to become effective forthwith."

(R.D. p. 43)

Conclusion

Respondent requests oral argument so he will know that the arguments in his briefs and the Recommended Decision of the Hearing Officer will actually come to the attention of the Commissioners. A rehearing should be granted and the Recommended Decision of the Hearing Examiner adopted by the Commission. The present Commission Opinion isn't supported by the record. Contrary to law, it fails to give proper weight to the findings of the Hearing Examiner. The penalty imposed on Pierce, who has already suffered severely and been suspended for nearly ten months is excessive, cruel and unusual. An excessive penalty is unjust, unwise and harmful to all concerned. A rehearing is called for.

Respectfully,

JOHN G. SOBIESKI,

EDWIN J. DOTSON,

Attorneys for John Pierce.

Dated September 21, 1955.

Filed September 26, 1955.

two bedroom home in the Huntridge area. Since we can only sleep in one bed at a time, you and your lovely wife are always welcome to visit with us for as long as you like.

Kindest regards to your wife and kids and all the fellows I know in Santa Barbara. Hope to hear from you soon.

Sincerely yours,

/s/ JOHN PIERCE.

JP/psp :Enc.

EXHIBIT No. CX5

Prepared from Journal and Ledger and Ctf. Stubs and Ctfs. of Las Vegas Thoroughbred Racing Ass'n Records 7/21/54 by C. R. Burr and S. W. McNair

Date	Common Ctf. No.	Common Shares	Name of	Date	Common Ctf. No.	Common Shares	Name of	Date	Common Ctf. No.	Trace to Original Source	Common Shares	Name of
				6/27/50	4489 orig.	1000	Herman Miller	11/ 1/51	10492		10	Steve Juran
								11/ 1/51	10489		20	Mary Taverne
								11/ 1/51	10490		20	Joseph Taverne
								11/ 1/51	10491		40	Rose Taverne
				6/27/50	4489 orig.	1000	Herman Miller	11/ 1/51	10493		20	Maxine Juran
				6/27/50	4489	1000	Herman Miller	11/ 6/51	10495	890 of 1100		Fox
7/20/50	3744 orig.	1000	J. M. Smoot	10/18/51	10435	100	J. M. Smoot			100 of "		
7/20/50	3744 orig.		J. M. Smoot	10/18/51	10436	100	J. M. Smoot			25 of "		
				1/28/50	3845 orig.	100	W. A. Albury			85 of "		W. A. Albury
							"	11/17/51	10514		15	
								11/ 6/51	10496		75	J. M. Smoot
						1300					1300	
				11/21/50	5918 orig.	1000	Hayward*	2/20/52	10591		400	Fox
				5/18/50	2624 orig.	50	Bev. Randall	2/20/52	10592		50	Coffey
				5/18/50	2623 orig.	25	R. W. Randall	2/20/52	10593	25 of	50	Coffey
				11/21/50	5918	1000	B & S Weinshenk			25 of "		
				1/26/51	7018 orig.	200	Hayward*	2/21/52	10594	600 of	775	Pierce
							B & S Weinshenk			175 of "		
				2/21/52	10594	775	J. Pierce	3/25/52	10608		500	Ramles
	stub dated	12/20/51						3/25/52	10609		275	J. Pierce
				3/25/52	10609	275	J. Pierce	3/26/52	10612		400	Wm. Fox
				12/14/50	6369 orig.	100	J. Smoot					
				5/18/50	2622 orig.	25	L. S. Randall					
				Total		3750					3750	

*Stub 2/21/51.

Dated 11/25/54.

JOHN PIERCE

Prepared from Journal & Ledger of Las Vegas Thoroughbred Racing Ass'n 7/21/54 by Charles R. Burr & Clifford L. Roop

Date	Preferred Ctf. No.	Pfd. Shares Orig. Issue	Name of	Date	Preferred Ctf. No.	Pfd. Shares	Name of	Date	Trace to Original Source		Name of
									Pfd. Ctf. No.	Pfd. Shares	
5/18/50	2484	25	Ronald Wm. Randall	2/21/52	2484	25	Ronald Wm. Randall				
5/18/50	2485	50	Beverly Randall	2/21/52	2485	50	Beverly Randall	2/21/52	9604	775	J. Pierce
11/21/50	5111	1000	E. B. or C. Hayward	2/21/52	5111	1000	E. B. or Claire Hayward	2/21/52	9605	500	Fox
1/26/51	6149	200	Bernyce & S. Weinshank	2/21/52	6149	200	Bernyce & S. Weinshank	3/25/52	9615	500	Ramles
				3/25/52	9604	775		3/25/52	9616	275	J. Pierree
5/18/50	2483	25	Lee S. Randall	3/26/52	2483	25	Lee S. Randall				
7/ 3/50	3282	100	W. A. Albury	3/26/52	3282	100	W. A. Albury	3/26/52	9618	400	Fox
					9616	275			9623	10	W. A. Albury
10/30/50	4497	20	May Dickinson	3/26/52	4497	20	May Dickinson		9624	10	J. Pierce

Prepared from Journal & Ledger of Las Vegas Thoroughbred Racing Ass'n Except for Pfd. Ctf. Nos. Obtained by Telephone July 28, 1954—Roop

Date	Original Issue			Original Issue in Name of	Date	Pfd. Ctf. No.	Common Ctf. No.	No. of Shares	Reissued in Name of
	Preferred Ctf. No.	Common Ctf. No.	No. of Shares						
8/30/51	8077	8955	200	Emery					
8/30/51	8078	8956	100	Emery					
1/ 2/51	5738	6596	100	Bashaw					
12/16/50	5571	6428	100	Englehart					
4/18/50	1632	1770	100	Ferguson					
6/19/50	3024	3194	100	E. Howard					
11/20/50	5032	5840	200	Landegger	10/11/52	9708	10696	1540	W. E. or Saxon Fox
7/10/50	3352	3605	250	Mintz					
7/14/51	7426	8305	40	Mintz					
12/31/50	5733	6590	250	Mintz					
8/24/51	8122	9000	50	E. Warren					
8/24/51	8123	9001	50	I. Warren					
10/ 9/50	4397	5194	200	F. A. or M. Smith					
11/ 1/50	4596	5400	300	F. A. or M. Smith	9/ 2/52	9671	10659	800	M. C. or F. Randles
12/21/50	5653	6510	300	F. A. or M. Smith					

CX6

(Copy)

February 21, 1952.

William B. Fox,
c/o Bank of America, Walnut Park Branch,
Santa Ana Street at Seville,
South Gate, California.

Dear Mr. Fox:

Pursuant to your request, I have herewith forwarded five hundred (500) units of the Las Vegas Thoroughbred Racing Association stock to the Bank of America. To wit:

500 Shares of Preferred stock issued to William E. Fox

400 Shares of Common stock issued to William E. Fox

50 Shares of Common stock issued to Allen M. Coffey

50 Shares of Common stock issued to Marie Coquillette Coffey

500 Units

I regret the delay, but it has been extremely difficult to acquire the stock.

Pursuant to our telephone conversation, I have purchased same for you at \$6.00 per unit or total \$3,000.00. I would greatly appreciate your check by return mail. Please mail your check directly to me, John Pierce, 1133 South 15th Street, Las Vegas, Nevada. I will advise you of any future develop-

ments and send you the current clippings as things progress.

I feel that the next few weeks until things are settled will be the only time that I may be able to pick up any further units. Therefore, if you or any of your friends want any additional Units, please advise me at your earliest convenience and I will attempt to purchase same for you.

With kindest regards and thanking you for your past interest, I am,

Sincerely yours,

/s/ JOHN PIERCE.

JP/pk

cc/William Fox

Ex. No. CX6 Docket No. Title John Pierce
Date 11/23/54 by AH.

CX29

John Pierce,
1104 Clark St.,
Las Vegas, Nevada.

November 10, 1953.

Charles S. Buck, Attorney at Law,
8179 Seville Avenue,
South Gate, California.

Dear Mr. Buck:

Your letter of November 6th received and contents carefully noted. Please be advised that I

acknowledge that I owe Mr. Fox \$1,000.00. I am sincere in my efforts to repay him. Unfortunately things have happened that have caused both Mr. Fox and myself despair and money. Specifically, the immediate closing of the Las Vegas Race Track. The near future may be much brighter since there have been plans submitted to reorganize and reopen the now defunct Las Vegas Race Track. I have several thousand shares of Stock in the plant that I'm endeavoring to sell and as soon as I can move same I certainly will take care of my obligation to Mr. Fox.

Your letter suggesting that you contact the District Attorney seems somewhat ambiguous. The checks that I gave Mr. Fox were in lieu of notes for monies borrowed, they were not cashed nor were they accepted by him in that sense at all. And in addition, Mr. Fox has in his possession a Government lease for 5 acres of property currently valued at \$5,000.00 as security for the borrowed monies, at most I can see your position in a Civil suit, which would certainly forestall and possibly make repayment of the debt impossible. You can readily see that no one would be interested in Stock from any individual cited in a legal action for payment of a loan. However glamorous and active Las Vegas may be, it's still a small town. A sneeze on 1st Street clearly reverberates to 25th Street.

As I stated above and from my conversations with the principals and the Board of Directors of the

Las Vegas Race Track, I am most certain that within the next three or four weeks that Mr. Fox and I will both be happier and I should be able to meet my obligation to him in full. I am sincerely grateful for Mr. Fox's hesitancy and consideration in the past and most certainly will be grateful for your continued consideration in the future.

If I had any other tangible assets that I could liquidate, I certainly would take that course, however, I own nothing. My car is at present mortgaged for some three thousand dollars and as they say in Rome, "you can't get blood out of a turnip." Once again let me assure you that I do appreciate Mr. Fox's past consideration and your future consideration.

Very truly yours,

/s/ JOHN PIERCE.

JP/psp

Ex. No. CX29 Docket No. Title John Pierce
Date 11/26/54 by AH.

CX 33

[Letterhead]

John Pierce Investments and Financing

March 23, 1954.

William E. Fox,
Loop Pharmacy,
8121 Seville,
South Gate, California.

Dear Mr. Fox:

I want to make some arrangement as to liquidating my debt to you. We have just moved after a long hard struggle. We are still not quite as soluble as we will be, but at least we are slowly getting on our feet again.

After checking over my obligations, I find that I can afford \$100.00 per month. I would like to send it all to you, but as you may know we also owe Fern some money. We know that she needs it quite badly and are wondering if you would agree to our paying you \$50.00 per month and her \$50.00 per month until we can erase the debt to her, then the entire \$100.00 to you until we erase that debt. Of course, if we get any sizable amount of money in from any source, I plan to liquidate your debt immediately and Fern's if it comes before that is payed up too.

You really have been most lenient and I sincerely appreciate it. Until just now, there was

simply nothing I could do to repay you. I wish it could be more now, but feel that at least this will begin to get this thing cleared up.

We have not notified Fern of our intention as yet, pending hearing from you as to whether this arrangement will be agreeable to you.

Again, my real appreciation of your patience, and with best regards to both you and Mrs. Fox, I am,

Very truly yours,

/s/ JOHN PIERCE.

JP/psp

Ex. No. CX-33 Docket No.....Title John Pierce
Date 11/30/54 By FR.

CX 35

United States
Department of the Interior
Bureau of Land Management

Form 4-776
(May, 1949)

Serial No. Nevada 02346

Date: Dec. 11, 1950

Lease Under Small Tract Act

1. Pursuant to the Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., sec. 682a) as amended, and subject

to valid existing rights, the regulations issued under said Act, and the terms and conditions herein set forth, the United States of America, the Lessor, represented by the Bureau of Land Management, hereby leases to Mr. John Pierce of 218 Chicago St.. Las Vegas, Nevada, the Lessee, for a period of 5 years, the following-described land, to be used for homesite purposes only: subject to rights-of-way for access roads and public utilities as follows: 16½ feet along the South boundary of the tract, described as follows:

E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 24, T. 21 S., R. 61
E.. M.D.M., Nevada, containing 5 acres.

2. The Lessee may apply for renewal of the lease, not more than 6 months nor less than 60 days prior to the expiration thereof, and, if it is determined that a new lease should be granted, will be accorded a preference right to a new lease, for such term and upon such conditions as may be fixed.

3. The Lessee may purchase the above-described land at or after the expiration of one year from the date of this lease, provided he has made the improvements herein required and has fully complied with the terms and conditions of this lease, for the amount of \$....., plus the cost of survey, if necessary to describe the land properly. The application to purchase may not be filed prior to 30 days before the expiration of one year from the date hereof.

4. The Lessee agrees:

- (a) To pay the Lessor, in advance, rental of \$25.00.
- (b) To construct upon the land, to the satisfaction of the Regional Administrator, Bureau of Land Management, improvements appropriate for the use for which the lease is issued. Plans may be submitted to the Regional Administrator for approval in advance of construction.
- (c) To observe all Federal, State, county, and other laws, regulations, and ordinances which are applicable to the premises, and to keep the premises in a neat and orderly condition.
- (d) To conduct all business operations, if authorized by this lease, in an orderly manner and in accordance with all applicable Federal, State, county, and other laws, regulations, and ordinances.
- (e) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all sub-contracts.
- (f) Not to commit waste or injury to the land, or to utilize it for any purpose other than that for which this lease is issued.
- (g) To take all reasonable precautions to prevent and suppress forest, brush, and grass fires and other fires that may result in damage, and to extinguish all fires before leaving the premises unattended.
- (h) Not to cut timber from the leased lands

without permission from the Lessor, which will not be granted except where the cutting is to clear the lands or make improvements thereon, and not to sell any of the timber.

(i) To take all precautions to prevent pollution of waters on and in the vicinity of this tract.

(j) To observe all laws and regulations for the protection of wildlife.

(k) Not to enclose or obstruct in any manner, or erect or maintain signs or buildings on any highways, roads, or trails commonly used for public travel. Unless otherwise provided in the order classifying this land for small tract purposes, the leased land is subject to a right-of-way of not to exceed 33 feet in width along or near the edges thereof for road purposes and public utilities, which may be utilized by the Federal or State governments, or the county or municipality in which it is situated, or by any agency thereof. In the discretion of the Lessor, the right-of-way may be definitely located prior or subsequent to the issuance of patent, if the land has been classified for sale as well as for lease.

5. There is reserved to the United States all of the coal, oil, gas, and other mineral deposits in the leased land together with the right to enter upon the land and prospect for, mine, and remove such minerals. There is also reserved to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755), all uranium, thorium, or any other materials which are or may be determined

to be essential to the production of fissionable materials, in whatever concentration, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, or remove the same.

6. Nothing contained in this lease shall restrict the acquisition, granting, or use of permits or rights-of-way under existing laws.

7. Authorized representatives of the Department of the Interior at any time shall have the right to enter the leased premises for the purpose of inspection, and Federal agents and game wardens shall at all times have the right to enter the leased area on official business.

8. This lease is subject to cancellation by the Lessor for failure of the Lessee timely to perform or observe any of the terms and conditions hereof, or of the regulations issued under the Act of June 1, 1938, where such default continues for 30 days after written notice by the Lessor.

9. Upon the cancellation or expiration of this lease, the Lessee will be allowed a reasonable time to remove his improvements from the land, or to make other disposition thereof. Upon his failure to do so, the improvements will become the property of the United States.

10. The Lessee will not assign this lease, nor sublet any portion of the premises, without prior ap-

proval of the Lessor and will not speculate in the privileges herein granted.

11. This lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

12. No Member of, or Delegate to the Congress, or Resident Commissioner, after his election or appointment, and either before or after he has qualified, and during his continuance in office, and no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease, or derive any benefit that may arise therefrom, and the provisions of Title 18, U.S.C., secs. 431-433, relating to contracts, enter into and form a part of this lease, so far as the same may be applicable.

THE UNITED STATES
OF AMERICA,

By /s/ A. L. SIMPSON,
Manager—Nevada Land
Survey Office.

/s/ JOHN PIERCE,
Lessee.

Witnesses to Signature of Lessee:

/s/ BERNADINE YOUNG,
/s/ JERMOE WENTWORTH.

Ex. No. CX-35. Docket No. Title: John Pierce. Date: 11/30/54. By FR.

CX 36

[Letterhead]

John Pierce, Investments and Financing

August 22, 1953.

Dear Mr. Fox:

Enclosed you will find a carbon copy of a letter I just took from John, I decided to make an extra copy to send to you and I want to ask you to do me a favor and call Mr. Lister. His phone number is Mutual-5698. I am most anxious for you to understand that this Oil Deal was as I explained on the phone and perhaps this will give you at least a little more satisfaction that it is so.

Also enclosed is my check in the amount of \$325.00 as per our conversation. Let me know about the Fischer check, for I do not want that to remain outstanding either.

I have discussed my phone call to you with John so that he now knows that I've sent you this money. For collateral for the remaining \$1000.00, you mentioned the property we have. I am enclosing the lease on this property with a diagram showing where it is. (The legal description on the lease would mean little to you having not seen where it is.)

By September 30, 1953, we will have sent you this money at which time you can return the lease. In the event that we have not sent you the \$1000.00,

naturally you may keep the lease on which we will make all necessary assignments.

Incidentally, I would like to mention that although the carbon copy of the letter enclosed states that we got a refund from the source of the stock, we didn't. John went out and borrowed the money in order to repay this man. He didn't even want to make him feel badly that he'd had to borrow the money to repay the mistake, so instead he made Mr. Lister feel that he, John, lost nothing by the deal. I mention this only to show you that even though you cannot seem to feel so, that John is actually a man of his word and if he sees a mistake, he is certainly willing to admit it. Now that Mr. Lister has been reimbursed, he certainly has a good investment, and John feels that you were able to get in on a good thing too, through his advice, and so do I.

Believe me when I say that I am glad that you were able to purchase the stock at the proper price, and although I must admit we were negligent in not checking this matter completely, John has never thought for one minute that you have made any purchase from him without a thorough check for he realizes (whether you can see it or not) that he is not as experienced, if only through an age factor, as you and has always known that in any investment you make you are thoroughly sure of yourself as to the facts. None of his deals are such that they don't bear an investigation, and it was with that thought in mind, I'm sure, that he gave you information regarding this Oil Stock Deal.

Again, let me tell you how happy I am that you were able to make the purchase as you were, and also that you informed us for it has saved us considerable trouble too.

You see, John is now on an actual deal and will definitely be able to repay you by Sept. 30 as mentioned and also at that time will have extra money with which to start us off so to speak in life. He had planned to take that stock and I am very grateful to you and so is he that we know its real value. It is certainly unfortunate that it has caused any ill-feelings, but as they say in all things there is some good and if some day you have the returns you should from that Oil Stock, well, then, perhaps it has been worth the loss of your friendship.

I must close this now for John will be returning any minute with the check for Mr. Lister to mail the letter.

We remain, and always will,

Yours very truly,

/s/ PAT & JOHN,

PAT AND JOHN PIERCE.

Ex. No. CX-36. Docket No. Title: John
Pierce. Date: 11/30/54. By: FR.

RX-1

Santa Barbara, California.

To Whom It May Concern:

This is to certify that any and all security transactions that the undersigned has had with one John Pierce have been fully, completely and satisfactorily terminated and settled.

Dated: This 12 day of June, 1954.

/s/ EARL B. HAYWARD.

Witness:

/s/ CHARLES S. STEVENS, JR.,
Attorney at Law and Counsel
for Earl B. Hayward.

Ex. No. RX-1. Docket No. Title: John
Pierce. Date: 11/22/54. By: W. H.

Before the Securities and Exchange Commission

In the Matter of:

JOHN PIERCE, 1021 Bracken Avenue, Las Vegas,
Nevada.

TRANSCRIPT OF HEARINGS

November 22, 1954

The above-entitled matter came on for hearing,
pursuant to notice, at 11:00 o'clock a.m.

Before: Edward C. Johnson, Examiner.

Present:

JOHN G. SOBIESKI,
EDWIN J. DOTSON,

Appearing on Behalf of John Pierce.

W. STEVENS TUCKER,

Appearing on Behalf of the Securities and
Exchange Commission.

* * *

Mr. Sobieski: If Your Honor please, ordinarily a [26*] statement of counsel is not evidence, but this statement which Mr. Tucker is about to make I am sure will be an accurate statement, and therefore I would be glad to stipulate that Your Honor may consider it as evidence unless I should object to some point of it.

Hearing Examiner: You had better wait until he makes the statement.

Mr. Sobieski: All right.

Mr. Tucker: Las Vegas Racing Corporation, a corporation, qualified for sale to members of the public, an amount to be \$2 million or \$2,500,000 of preferred and common stock sold in units of one share of common and one share of preferred.

Hearing Examiner: When was that?

Mr. Tucker: That was prior to September, 1951, and in September, 1951, proceeds of the sale were exhausted, the race track was not completed, and they needed a very considerable sum of additional money to complete the track.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

There were some stockholders' differences, extending down through the end of the year. In January, 1952, an involuntary creditors' petition was filed under Chapter X of the Bankruptcy Act in the United States District Court for Nevada. There was an answer filed, so that there was an issue joined, but by consent and some time about or in the month of March, an order was entered approving the petition, and one Thomas J. McLaughlin of Las Vegas was appointed trustee under Chapter X of the [27] Bankruptcy Act, and thereafter proceedings followed in their due course, and two plans of reorganization were submitted to the trustee.

In the fall of 1952 one of the plans was approved by the Court for submission to creditors and stockholders, and I believe that order, ordering the submission, was in November of 1952.

Following that plan was submitted to creditors and stockholders, and they voted favorably on it, it was confirmed in January or February of 1953, and all of these proceedings related to Las Vegas Thoroughbred Racing Association.

The plan provided for the formation of a successor corporation, to which the assets would be turned over in exchange for the issuance of new securities, partly in the form of bonds for new money, to the tune of \$2 million, provided by a syndicate who sponsored the plan, and partly in the form of new common stock, part of which went to the syndicate along with the bonds, the balance which was distributed to the holders of the old preferred stock, the old common stock having been

found by the Court to have been under water, no value or equity for it.

Hearing Examiner: What was the authorized capital stock issue of the company?

Mr. Tucker: I believe the authorized capitalization was about \$3 million. There was \$2 million I believe represented the preferred, there was \$500,000 of common stock; that was [28] 500,000 shares of common stock that were sold together with the preferred stock.

Hearing Examiner: Sold as a unit?

Mr. Tucker: One share and one share making a unit, one of each. And there were 500,000 shares of promotion stock issued to the promoters.

Mr. Pierce: There were a million shares of common stock, and 500,000 shares of preferred stock.

Hearing Examiner: A million and 500,000? How much of that was sold to the public?

Mr. Pierce: 500,000 units, 500,000 shares of common and 500,000 shares of preferred and that was at \$5 a share, making \$2,500,000.

Hearing Examiner: Is that your understanding?

Mr. Tucker: That's right.

Hearing Examiner: All right.

Mr. Tucker: The Las Vegas Jockey Club was a successor corporation, so you will find here an offering of shares of the Jockey Club as well as the other transactions of the Racing Association.

Ultimately the Jockey Club tried to run a racing meet. They got badly in debt, went into bankruptcy in the spring of 1954.

Mr. Pierce: And it is in bankruptcy now.

Mr. Tucker: And it is in bankruptcy now. [29]

* * *

EARL B. HAYWARD

was called as a witness, and having been first duly sworn, was examined and testified as follows: [51]

* * *

Direct Examination

By Mr. Tucker:

Q. Your name is Mr. Earl B. Hayward?

A. That's right.

Q. Where do you reside, Mr. Hayward?

A. Santa Barbara, California.

Q. How long have you resided there?

A. All my life.

Q. Are you acquainted with John Pierce of Las Vegas, Nevada, the respondent in this proceeding?

A. I am.

Q. You recognize Mr. Pierce seated here at counsel table? A. Yes, sir.

Q. Did you, during the public sale of units of Las Vegas Thoroughbred Racing Association in 1950 or 1951, buy some units of that Association?

A. Yes.

Q. How many units did you buy?

A. 3,000 shares.

Hearing Examiner: Keep your voice up a little more, so that all can hear you.

The Witness: Yes, sir.

Q. (By Mr. Tucker): Do you mean 3,000 shares

(Testimony of Earl B. Hayward.)

all together, or 1,500 preferred and 1,500 common, or do you mean 3,000 shares of [52] preferred and 3,000 shares of common?

A. Well, I bought \$15,000 worth of stock. Now, whatever that indicates, that is what I bought.

Q. And did you receive the certificates?

A. I did.

Q. For that stock? A. Yes.

Hearing Examiner: Mr. Hayward, before you get any further, tell us about yourself. What is your business?

The Witness: Well, I am 44 years old, and I have lived in Santa Barbara all my life, and I am in the floor-covering business.

Hearing Examiner: Floor-covering business?

The Witness: For the third generation.

Hearing Examiner: You must know your business.

The Witness: I do.

Q. (By Mr. Tucker): You are still engaged in that business?

A. Yes, sir. I employ about 54 men and have about 18 trucks, and we are the oldest business in Santa Barbara.

Hearing Examiner: What is that business called?

The Witness: Hayward's.

Hearing Examiner: Hayward's; I see.

Q. (By Mr. Tucker): Did you buy that stock through a salesman who came to [53] you and sold it to you?

(Testimony of Earl B. Hayward.)

A. I bought it through John Pierce, yes. I went to Las Vegas with a friend of mine. I have forgotten what year it was—1951, I believe, who was interested in race track operations, and it was through Dr. Pierson, a friend of mine in Santa Barbara, that I became interested in an investment of that type, because he was subsequently interested in a like deal, and we went over there together to look at the situation and to buy stock if we liked it, which we did, and we both bought stock at that time. I bought \$5,000 worth of it, or a thousand shares, at that time. Then later I bought subsequent stock of 2,000 shares. That is Dr. Clyde Pierson, who is in business in Santa Barbara.

Q. Do you recall receiving delivery of the stock certificates representing your purchases?

A. Yes.

Q. And do you recall that you received certificates for common stock and preferred stock?

A. That's right.

Q. And do you recall how many certificates you had of common stock and how many of preferred stock? A. No, I don't.

Q. For the purpose of refreshing your recollection, was it not a fact that for each share of preferred you received, you received one share of common, that you had the same number [54] of each?

Q. And that the amount of stock that you did receive was 3,000 shares of preferred, and 3,000 shares of common? Does that sound correct to you?

A. I believe that is correct, yes.

(Testimony of Earl B. Hayward.)

Q. Now, subsequently—

Hearing Examiner: How much did you pay for that? \$15,000?

The Witness: That's right.

Hearing Examiner: Yes.

Q. (By Mr. Tucker): Subsequently, at or about the end of the year, 1951, or early in the year, 1952, did you have any discussion with Mr. Pierce with respect to the sale of any of your stock in that Association?

A. Well, dates don't mean a great deal to me, that long ago. Is this prior to the opening of the track?

Q. For the purpose of refreshing your recollection, I hand you Commission's Exhibit CX-1 for Identification, which purports to be a letter dated March 3, 1952, addressed to you, and signed by John Pierce.

Mr. Sobieski: May I see that for just a minute?

Mr. Tucker: Yes.

(Document handed to Mr. Sobieski by Mr. Tucker.)

Q. You recognize that as a photostatic copy of a letter [55] received by you from Mr. Pierce at or about the date appearing on the exhibit?

A. Yes, sir.

Q. Now, prior to that time had you had any discussion or talk with Mr. Pierce with respect to the sale by you of some part of your holdings of stock of Las Vegas Thoroughbred Racing Association?

(Testimony of Earl B. Hayward.)

A. Yes, I believe that I was either over there, or we were talking on the phone; he asked me if I wanted to sell any of my stock.

Q. And can you tell us as far as you can remember what was said at that time by either you or Mr. Pierce?

A. Well, merely the fact that if I was interested, he had a buyer for it. That was the gist of the conversation, and if I was interested in selling any, all or any of a portion of my stock, I could get rid of it at that time. Well, at that time I wasn't.

Q. Now, did there come a time when you did enter into some arrangements with Mr. Pierce with respect to disposing of some of your stock?

A. Yes, there was.

Q. Was that at the time of that conversation, or— A. Later.

Q. Following that time?

A. Later, following that time. [56]

Q. And how did that occasion come about, who initiated it, you or Mr. Pierce, as far as you recall?

A. I think I did.

Q. By what means, by mail, telephone, or did you see him, again, if you can remember?

A. I think we were over there, and saw him.

Q. And will you tell us, as closely as you can recall, what the substance of that conversation was?

A. Well, the substance, the gist of the whole thing is the fact that I was interested at that time, didn't look too promising as to going through for the whole deal as it was originally explained to me,

(Testimony of Earl B. Hayward.)

and after waiting some time for it to open and it being prolonged, I thought I would get some of my money back, sure of it, be assured of it, and it would be good business to do it. So I asked him if he wouldn't take and sell some of my stock, get my money back, and he said that he could.

Hearing Examiner: I think you ought to fix the date, as near as you can, when this conversation occurred. Was it in the fall, summer, spring, and what year, now?

The Witness: Well, sir, I don't know.

Hearing Examiner: Fix it the best you can. You go to Las Vegas with regularity?

The Witness: No, sir.

Hearing Examiner: Take the witness. [57]

Q. (By Mr. Tucker): Did you reach an agreement?

A. We reached an agreement, yes.

Q. About it, with Mr. Pierce? A. Yes.

Q. Can you tell me what the agreement was?

A. Well, he was going to take—

Mr. Sobieski: May I interrupt? Is this agreement in writing, or is it verbal?

The Witness: It was a verbal agreement.

Mr. Sobieski: And can you tell us approximately when it was?

The Witness: No, I can't.

Mr. Sobieski: And who was present at the time of this verbal agreement?

The Witness: Just John and I, I think, just the two of us.

(Testimony of Earl B. Hayward.)

Mr. Sobieski: And it was in Las Vegas?

The Witness: I don't know whether—I don't recall whether it was in Las Vegas or on the phone, to be honest about it. I mean, it has been so long, and I talked to John several times on the phone, and I have been over there several times.

Mr. Tucker: We will, by connecting evidence, indicate at least the date prior to which this must have taken place, Your Honor.

Hearing Examiner: Are you sure, Mr. Hayward, that you had [58] what you term an understanding or an agreement with Mr. Pierce here with reference to the sale of some of the stock which you had previously purchased? Are you sure of that? That's all we want to know.

The Witness: Oh, yes.

Hearing Examiner: All right.

Q. (By Mr. Tucker): Now, pursuant to that agreement did you turn over to Mr. Pierce some stock? A. Yes, I did.

Mr. Sobieski: Shouldn't we first get what the agreement was?

Mr. Tucker: I am going to.

Mr. Sobieski: Oh, excuse me.

Q. (By Mr. Tucker): To the best of your recollection, what was the understanding you entered into with Mr. Pierce about disposing of this stock?

A. He was going to sell—

Hearing Examiner: What did he say to you and what did you say to him, as near as you can recall?

(Testimony of Earl B. Hayward.)

The Witness: Well, of course, I wanted as much as I could get of what I paid for it out of the stock, and—but I think, as we talked, he said, "Well, first, if I get you \$3 a share for the first 200 shares and \$4 a share for the 800 shares, [59] that's what we will do."

And I agreed to that, and that's what the arrangements were that were made.

Q. (By Mr. Tucker): And was the arrangement— A. But as I told him—

Hearing Examiner: Go ahead.

A. I would like to have gotten what I paid for it.

Well, it was not salable, I guess, or the market wasn't there for that price. So I took what I could get.

Hearing Examiner: Now, you actually turned over the thousand shares, did you, or thousand units, as the case may be?

Mr. Pierce: Thousand shares.

Hearing Examiner: Thousand shares or thousand units?

The Witness: A thousand shares.

Mr. Pierce: Units.

The Witness: Or units.

Q. (By Mr. Tucker): A thousand each of common and preferred?

A. That's right, \$5,000 worth, call it units or shares, I don't know.

Q. It is what cost you \$5,000 when you bought it?

(Testimony of Earl B. Hayward.)

A. That's right, yes.

Hearing Examiner: You turned that over to him?

The Witness: Yes. [60]

Hearing Examiner: How did you send it to him?

The Witness: By mail.

Hearing Examiner: From Santa Barbara to Las Vegas?

The Witness: That's right.

Q. (By Mr. Tucker): Now, after you turned it over to Mr. Pierce, did you receive that letter marked Commission's Exhibit 1 for Identification that is on the table before you? A. Yes.

Q. Then, handing you Commission's Exhibit 2 for Identification which purports to be a letter sent to you by John Pierce on May 14, 1952, I ask you if you recognize it as a copy, photostatic copy of a letter received by you from Mr. Pierce through the mail at or about that time?

A. That's right, May 14th.

Q. Do you recall whether or not you had any conversations or any talks with Mr. Pierce between March 3, 1952, and May 14, 1952, between these two letters? A. No, I don't.

Q. Handing you what purports to be a check of John Pierce payable to you in the sum of \$800, photostatic copy of a check dated May 14, 1952, Commission's Exhibit 3 for Identification, can you tell us whether that is a photostatic copy of the check referred to in the May 14, 1952, letter?

A. Yes, I believe it is. [61]

(Testimony of Earl B. Hayward.)

Q. Now, attached to that check there is what purports to be a bank's advice to you of overcharge to your account. Can you tell us more about that check and what happened to it after you got it?

A. Well, as evidenced here, it refreshes my memory that I deposited, my wife deposited, that to our account at the bank, and it was returned "Insufficient funds."

Q. And—

A. Which was later made good.

Q. Can you recall about when it was made good?

A. September the—in September, in 1952.

Q. Do you recall whether you received the payment referred to in Commission's Exhibit 1, the letter of March 3, 1952, in the sum of \$600?

A. Well, that is the one that catches me. I have no record of it, but—my records are very poor, I will tell you that.

Q. You may have received that?

A. I may have. If John Pierce says I did, I believe him; I would say I did.

Q. As to that one? A. Yes.

Q. Now, other than that \$600 and the \$800 that you received in September, 1952, have you received any other payments from Mr. Pierce from the proceeds of the sale of that thousand [62] units of stock?

A. Yes, as our agreement was, to pay me for my stock, was that he would pay me \$100 a month until it was paid up, which—

(Testimony of Earl B. Hayward.)

Q. When was that agreement made?

A. That was made in, I believe it was June.

Q. Of what year? A. Of this year, 1954.

Q. 1954? A. That's right.

Q. Mr. Pierce then came to you?

A. Yes, he did.

Q. And what did he say?

A. He said that he was having a tough time and that he knew he owed me the money and he wanted to pay, and he wasn't trying to take an advantage of me, but circumstances were such at the time that he just couldn't pay restitution to the full amount, and would I accept his note for payment of \$100 a month, until it was cleared up, and I told him I would.

Q. Do you recall what the total amount was that he agreed to pay? A. No, I don't.

Hearing Examiner: Did he give you a promissory note?

The Witness: Yes, I think he did.

Hearing Examiner: In what amount? [63]

The Witness: That I don't remember.

Q. (By Mr. Tucker): Where is it?

A. It is in my safety deposit box, in Santa Barbara.

Q. At that time did he make any payment to you? A. Yes, he did.

Q. How much did he pay you?

A. Paid me \$100.

Q. And since that time what has he paid to you?

(Testimony of Earl B. Hayward.)

A. \$100 each month. It averages \$100 each month.

Q. Well, I would like to have you give us the dates of the payments and the amounts of the payments.

A. In June he gave me \$100, and in July \$100, and in August \$100.

Q. That's \$300. Now, has he paid any more?

A. And this month, he has given me \$200.

Q. When was that? A. Today.

Q. By cash or check? A. By check.

Q. Personal check? A. Yes, sir.

Q. Now, between June of 1954 and May 14, 1952, did you make any efforts to get an accounting from Mr. Pierce for your shares of stock, or the proceeds from the sale of your shares [64] of stock?

A. Between which dates is that, sir?

Q. Between May 14, 1952, the date of Commission's Exhibit 2, and June, 1954, when he paid you \$100?

A. I think Mr. Pierce came to Santa Barbara and talked to me, stayed at Dr. Pierson's motel, and we talked about it, and it was again he said that he was having a tough time, so to speak, then I called him once, after that. I think I talked to him twice.

Q. Now, and what did he say on these occasions?

A. Well, that he was doing the best he could, and it wouldn't be too long, and that he would send me some money.

Q. Did he say whether or not he had sold the stock?

(Testimony of Earl B. Hayward.)

A. Yes, he did. He said he did sell the stock.

Hearing Examiner: When was this now?

Mr. Tucker: I was just trying to fix the date of it.

Q. (By Mr. Tucker): When did he tell you he had sold the stock?

A. Well, I don't believe whether I ever heard when he sold the stock.

Q. I mean, when did he tell you he had sold it?

A. At the time he was in Santa Barbara.

Q. And do you recall about when that was?

A. Well, that must have been in—

Q. You have testified that he made a payment to you of [65] \$800 in September.

A. In September.

Q. In 1952? A. Yes, in 1952, and—

Hearing Examiner: Was that the final payment, Mr. Hayward, or was that the \$800 in September, 1952, the payment for the bad check, or was it some other payment?

The Witness: That was the payment for the bad check, that's right.

Hearing Examiner: Mr. Tucker, you have been talking about a lot of documents here, but you don't normally have the witness do any more than describe a document before you offer it in evidence.

I would like to see, if they are going to be offered, I would like to see them.

Mr. Tucker: At this time, I would like to offer Commission's Exhibits 1, 2 and 3, as described.

Would you like to see them?

(Testimony of Earl B. Hayward.)

Mr. Sobieski: No, sir.

Hearing Examiner: You go right ahead, while I am looking at these documents. You are talking about something, and I would like to follow you.

The Witness: Yes, sir.

Hearing Examiner: You go ahead.

The Witness: The question again? [66]

Q. (By Mr. Tucker): The question was, when did Mr. Pierce tell you he had sold the stock?

A. Well, it was prior to September, in 1952.

Q. At that time did he tell you he had sold all of the stock?

A. Now, I don't know whether he said all of the stock or not, to be truthful. I don't know. But he said he sold the stock. Now—

Q. Did he ever tell you that he had sold all of the stock? A. I don't remember.

Q. Did he ever tell you of the price, as to the price at which he sold your stock? Did Mr. Pierce ever tell you? A. No.

Q. The price at which he sold your stock?

A. No.

Q. At the time that Mr. Pierce discussed with you in June, 1954, the matter of your accepting a note, did he tell you the price at which he had sold your stock? A. No.

Hearing Examiner: Mr. Hayward, you received the subpoena from the Commission, did you, to testify?

The Witness: Yes, I did.

Hearing Examiner: And on that subpoena you

(Testimony of Earl B. Hayward.)

were required [67] to bring all records in connection with the transactions, and this note resulting from the transaction which was given you in June, 1954, is that correct, June, 1954?

The Witness: That's right.

Hearing Examiner: Is in your bank now, is that right?

The Witness: Yes.

Hearing Examiner: In Santa Barbara?

The Witness: Yes.

Hearing Examiner: And you don't recall how much it is, the face amount of the note?

The Witness: No, I don't.

Hearing Examiner: How much are the payments?

The Witness: \$100 a month.

Hearing Examiner: For how long?

The Witness: Until it is paid up.

Hearing Examiner: I don't want to press you unduly.

The Witness: I understand.

Hearing Examiner: I would like to know the amount of it, if you recollect?

The Witness: I don't, really.

Mr. Tucker: May it be stipulated—

Hearing Examiner: Mr. Pierce, do you recall the amount of that note?

Mr. Pierce: Yes, \$2,200 plus interest.

Hearing Examiner: \$2,200 plus interest? [68]

The Witness: That's right.

Hearing Examiner: All right.

(Testimony of Earl B. Hayward.)

Mr. Pierce: Six per cent.

Hearing Examiner: To be paid off monthly?

The Witness: That's right.

Hearing Examiner: All right, Mr. Tucker.

Mr. Tucker: Cross-examine.

Hearing Examiner: Let me ask you one question.

Examination

By Hearing Examiner:

Q. If the note in question was \$2,200, how was that sum arrived at, do you recall?

A. No, I don't. I sort of washed my hands of the deal. What I got was gravy, after all is said and done; you know what I mean.

Q. You are not obliged to agree with any suggestions that I make. I am merely asking a few questions now. A. That's all right.

Q. Was that \$2,200 suggested by Mr. Pierce?

A. No.

Q. It was not? A. No.

Q. Well—

A. It was determined on—I believe, say I gave him a thousand shares, at \$3 a share, I got—and say he sold 200 [69] shares of my thousand—

Q. That was \$600? A. Yes.

Q. All right. A. We got that.

Q. That is what this check represents, which was dishonored on one occasion, and subsequently paid?

A. That's right.

Q. All right, go ahead.

(Testimony of Earl B. Hayward.)

A. And then for the 800 shares, we got, sold \$4 a share, so that was what he owed me, less the amount he paid me, and at the time, that was due and payable at that agreed approximate figure, plus interest.

Q. So you understand the \$2,200 represents what he owed you plus the payments of \$600 for 300 shares—for 200 shares at \$3 per unit—plus the sale of 800 units at how much? A. At \$4.

Q. At \$4 a share. Let me do a little figuring here.

Hearing Examiner: Mr. Pierce, we will swear you.

Mr. Pierce: Yes, sir.

(Witness excused.)

Whereupon,

JOHN PIERCE

was called as a witness, and having been first duly sworn, was examined and testified as follows: [70]

Examination

By Hearing Officer:

Q. Go ahead.

A. Two hundred units sold at \$3 a unit, which made \$600.

Q. That's right.

A. Then 400 units sold that I paid him for, at—I mean, 200 units sold, that I paid him \$4 a unit for.

Q. Wait a minute. You had 200 units?

A. At \$4.

(Testimony of John Pierce.)

Q. At \$3, the first 200?

A. That's right, and 200 at \$4.

Q. All right.

A. That's \$800. That's what that check represents.

Q. Which is known as Commission's Exhibit 3. All right, the total of that was \$1,400?

A. That's right.

Q. All right, now, how did we get to the note of \$2,200, subsequently agreed to?

A. Well, \$600 for 200 shares, and eight times four is thirty-two, that's \$3,200, for the balance of the stock. That would make a grand total of \$3,800. Is that right?

I gave him \$1,400 that you have evidence in checks there. That makes it \$2,400.

At the time, we made the agreement to pay it off monthly, I gave him an additional \$200. [71]

Q. And that reduced it to \$2,200?

A. \$2,200. That was the note that was left, at \$100 a month.

Hearing Examiner: Do you recall getting that additional \$200 at the time the agreement was made, Mr. Hayward?

Mr. Hayward: No, I don't, but if he says I got it, O.K. I don't remember it, though.

Hearing Examiner: What I don't quite figure, and I may not be seeing this quite right; first, Mr. Sobieski, if you want to object to my taking—I usually don't like to do this sort of thing; you have your client, you are advising him—but you said

(Testimony of John Pierce.)

first, Mr. Pierce, 200 shares at \$3 is \$600, then I thought you said 200 shares at \$4, or \$800 which this check represented.

The Witness: Yes, sir.

Mr. Sobieski: By "this check," Your Honor—

Hearing Examiner: Commission's Exhibit 3 is the check.

Q. (By Hearing Examiner): What did you say about the 800 shares at— A. At \$4.

Q. We have disposed now of 400. There is only a thousand involved. There could be only 600 left.

A. That's right.

Q. 600. Now, if that 600—now, I am not testifying now, but if that 600 was at \$4, that would be \$2,400? [72] A. Yes, sir.

Q. And if you gave \$200 additional, which Mr. Hayward doesn't recall at this time, that would reduce it down to \$2,200.

Hearing Examiner: It seems I am giving better testimony than the witnesses, Mr. Tucker. Of course, I am not testifying; I am trying to arrive at a figure.

Mr. Sobieski: Maybe that is why we have Hearing Officers, Your Honor; you come out with the facts.

Hearing Examiner: Thank you, Mr. Sobieski, but I have never been known to be a mathematician or a figurer, by any means. I have difficulty enough just reading plain law.

Mr. Hayward: What else?

Hearing Examiner: Just wait a few minutes.

(Testimony of John Pierce.)

We may have a few more questions for you. We can well understand, Mr. Hayward, that you have your business which occupies most of your time.

Mr. Hayward: That's right.

Hearing Examiner: You purchase a few shares of stock here and there, which might not be of much consequence to you.

Mr. Hayward: That's right.

Hearing Examiner: You may inquire, Mr. Sobieski.

(Witness excused.)

Whereupon,

EARL B. HAYWARD

resumed the stand, was further examined, and testified as follows:

Cross-Examination

By Mr. Sobieski:

Q. Mr. Hayward, prior to making this settlement with Mr. Pierce, you consulted with Mr. Charles S. Stevens, Jr., an attorney who practices law in Santa Barbara? A. That's right.

Q. Has Mr. Stevens represented you for quite some time? A. Yes.

Q. And you consulted, without going into the details of what you said to Mr. Stevens, prior to making this settlement, you consulted with Mr. Stevens, is that correct? A. That's right.

Q. And I show you a paper which purports to be signed by you and by Mr. Stevens, your attorney,

(Testimony of Earl B. Hayward.)

and those are the signatures of yourself and Mr. Stevens? A. That's right.

Q. And that document was executed on or about the date it bears, June 12, 1954?

A. That's right.

Mr. Sobieski: We will offer this as Respondent's Exhibit—

Hearing Examiner: It may be received as Respondent's Exhibit 1. [74]

(Respondent's Exhibit No. 1 was marked RX-1 for Identification and received in evidence.)

Q. (By Mr. Sobieski): Was Mr. Stevens present at any of the conferences that you had with Mr. Pierce on or about June 12, 1954? A. Yes.

Q. And during this time, the question of what Mr. Pierce had sold these shares for was never brought up, was it? A. No.

Q. Either by you or Mr. Stevens? A. No.

Q. And you thought, as I understand it, that you were to receive \$3 a share for 200 shares, and \$4 a share for 200 shares, is that correct?

Mr. Pierce: For 800.

The Witness: For 800.

Mr. Sobieski: Yes, that is an inadvertent error on my part.

The Witness: What was that again?

Q. (By Mr. Sobieski): You were to receive \$3 a share for 200 shares, and \$4 a share for the remaining shares, is that correct?

(Testimony of Earl B. Hayward.)

A. That is correct.

Q. So that when you received this note together with the other payments, you felt your agreement had been performed, is [75] that correct?

A. Yes.

Q. Now, as I take it, some time prior to September of 1952, Mr. Pierce talked to you either in person or over the phone, and in which he said that there would be a delay in paying you the balance of the money coming to you, but that you would ultimately be paid. Was there such a conference?

A. Yes, that's right.

Q. And what did you say to that, Mr. Hayward?

A. It was agreeable to me. I knew I would get it.

Q. You were willing to grant him the delay, is that correct? A. Oh, yes.

Mr. Tucker: What was the date of that last conversation?

The Reporter (Reading):

"* * * some time prior to September of 1952 * * *"

Q. (By Sobieski): Now, at the time that Mr. Pierce came to see you in 1954, you consulted a lawyer before making this settlement. Had you previously consulted any lawyer with reference to these transactions with Mr. Pierce? A. No.

Mr. Sobieski: No further questions.

(Testimony of Earl B. Hayward.)

Redirect Examination

By Mr. Tucker: [76]

Q. To refresh your recollection, Mr. Hayward, particularly in view of the last question, had you not, as a matter of fact, consulted Mr. Stevens about this matter prior to that time?

A. I consulted Mr. Stevens, my attorney. I don't recall, sir——

Q. About trying to collect the amount that you had coming from Mr. Pierce?

A. I don't know whether it was before or afterwards, during this time.

Q. For the purpose of refreshing your recollection I wonder if you recall a telephone conversation that you had with Mr. Burr of our Los Angeles office on or about the 5th or 6th day of May, about whether or not you had made a settlement at that time with Mr. Pierce? Do you recall Mr. Burr calling you and asking you if you had made a settlement with Mr. Pierce?

A. I remember Mr. Burr calling me. I don't recall what was said, however. If I told Mr. Burr, if you have any conversation there that I had told Mr. Burr, I am sure that is what took place.

Q. And for the purpose of refreshing your recollection——

Hearing Examiner: If you have got a copy of that conversation there, you may show it to him, for purposes of refreshing his recollection.

(Testimony of Earl B. Hayward.)

Mr. Tucker: Well, this is in the form of a memorandum of [77] Mr. Burr, in which the conversation is recorded. It is not a memorandum of the witness.

Hearing Examiner: Well, I mean, you can show that to the witness.

Mr. Sobieski: May I see it, too?

Hearing Examiner: Show it to respondent's lawyer first, and let him see that, and see if that aids and assists Mr. Hayward in knowing what occurred on that occasion.

Mr. Tucker: Yes, sir.

(Document handed to Mr. Sobieski.) [78]

Hearing Examiner: That raises another question, Mr. Sobieski. Normally, a person's recollection is refreshed in two ways. In neither way as I recall is it by showing him a document which has been prepared by someone else on the other end of the line.

Mr. Tucker: That is not the usual way of refreshing recollection.

Hearing Examiner: No, the normal method is by present recollection refreshed, or past recollection recorded; and it would be the result of initiating some action by the person whose recollection is to be refreshed, some document he may have prepared or may have had prepared under his supervision and direction at or about the time of the occurrence of the event.

Now, what we are doing here, and suggested by the Hearing Examiner—and he is occasionally wrong, of course—is that this witness might refresh

(Testimony of Earl B. Hayward.)

his recollection by looking at a document made by Mr. Burr.

Have you any views on it? This witness is not obliged to agree to anything. If this document will aid and assist him, is it proscribed by any rule of law?

Mr. Tucker: What I propose to do is ask leading questions, based on what is in the document.

Hearing Examiner: Well, all right.

Mr. Tucker: I think we may make a statement, if we may, [79] and see if it accords with the witness' recollection of the facts, that on or about May 5th or 6th, 1954, Mr. Burr had a telephone conversation with Mr. Hayward about whether or not the account had been settled, and following that telephone conversation Mr. Burr the same day received a telephone call from Mr. Charles Stevens, who is the attorney for Mr. Hayward, and that Mr. Stevens advised Mr. Burr that Mr. Hayward was in his office, and engaging Mr. Stevens in connection with the collection of this account, and Mr. Stevens then wanted to see if he could get certain information from Mr. Burr.

Hearing Examiner: What was the date of that alleged occurrence?

The Witness: May.

Hearing Examiner: May of this year?

Mr. Tucker: On or about May 5th or 6th.

Hearing Examiner: Of 1954?

Mr. Tucker: Of 1954.

(Testimony of Earl B. Hayward.)

Mr. Sobieski: Well, then, I will ask a couple of more questions.

The Witness: It must have been in April, because I was in Alaska in May.

Q. (By Mr. Tucker): This was on or about May 7, 1954. Did you not leave for Alaska immediately after that?

A. Yes, I guess that is it. I was thinking I was in [80] Alaska all of the month of May.

Q. You left within a day or so after that, it was that close, was it not?

A. Yes, it must have been, right close to that time. I was up there a month.

Mr. Tucker: Have you concluded, Mr. Sobieski?

Mr. Sobieski: No.

Recross-Examination

By Mr. Sobieski:

Q. Then Mr. Stevens never took any action at this time other than this one consultation, is that correct?

A. That's all, I think so. And writing up this form that the Judge has here.

Q. Yes.

A. On that payment deal, the agreement.

Q. And you yourself never made any complaint to the Securities and Exchange Commission, did you, Mr. Hayward? A. No.

Q. They contacted you? A. Yes.

Mr. Sobieski: No further questions.

(Testimony of Earl B. Hayward.)

Further Redirect Examination

By Mr. Tucker:

Q. With respect to this—

Hearing Examiner: You authorized your lawyer to do [81] something in connection with this account, didn't you?

The Witness: That's right.

Hearing Examiner: Was it delinquent at that time?

The Witness: Yes.

Hearing Examiner: You tell us what you authorized Mr. Stevens, your lawyer, to do in connection with this delinquent account.

The Witness: I authorized Mr. Stevens to write and find out when it was going to be taken care of.

Hearing Examiner: This is after Mr. Burr put a telephone call in to you at Santa Barbara, is that right, your best recollection?

The Witness: I don't know whether it was before or afterwards.

Hearing Examiner: All right, sir.

The Witness: Actually.

Hearing Examiner: All right, Mr. Tucker.

Mr. Tucker: Have you concluded your cross-examination?

Mr. Sobieski: Yes.

Q. (By Mr. Tucker): When it got down to this settlement after it had been going along two years

(Testimony of Earl B. Hayward.)

and nothing paid, it was at a question of taking what you could and getting it over with, was it not?

A. Yes, sir.

Q. And that was the basis on which you entered into this [82] arrangement? A. That's right.

Well, to a point, I will put it that way.

Q. To what point?

A. Well, if I wasn't going to get something that was worthwhile, I'd just as soon chuck it all. I mean, I wasn't going to give it away.

Q. Who computed the figure, the figure on which this settlement was made; did you figure that out, or did Mr. Pierce figure it out?

A. I think we both talked about it, and I agreed to it. It is simple arithmetic, as far as figuring it out and see what I could come up with on the final analysis, and I was in accord, and I agreed to the settlement on that exchange.

Q. And at that time was anything said about Mr. Pierce tell you what price he had obtained from the resale of your stock? A. No, sir.

Mr. Tucker: No further questions. [83]

Hearing Examiner: Just one further question:

Examination

By Hearing Examiner:

Q. Then between the date of March and May, 1952 and— A. June.

Q. —June 12, 1954—

A. Yes; I received nothing.

(Testimony of Earl B. Hayward.)

Q. You had no discussions with Mr. Pierce with reference to purchase or sale of this stock?

A. He had the stock all that time.

Q. Yes, but you—

A. You are asking me whether I got any money during that time?

Q. Yes. A. No.

Q. That's right, between May, 1952, and June 12, 1954? A. I had seen him, yes.

Q. But you didn't get any money?

A. I had been to Las Vegas, I would say two or three—twice, and seen him each time.

Q. What were you doing over there? Were you just on a visit?

A. Just on a vacation, you might say.

Q. A vacation; I see. Did you have any discussions with Mr. Pierce between these dates here with reference to the stock [84] which you had previously turned over to him, that is to say, the 1,000 units?

A. Yes.

Q. Units of stock?

A. I had asked him at different times I saw him, and it was just a rough situation, as far as his—

Q. Do you recall what he said to you other than he said it was a rough situation?

A. Not specifically, no. That is the gist of it, that he just didn't have the money, and it was—

Q. Did you know whether he owed you any money at that time? A. Sure, I did.

(Testimony of Earl B. Hayward.)

Q. How much, how did you happen to know that?

A. Because he had a thousand units of my stock.

Q. Well, he had paid you back in March and May, he had paid you—

A. For a certain amount of stock.

Q. For a certain amount? A. Yes.

Q. In other words, he had paid you \$600, and paid you \$800, too, hadn't he? A. Yes.

Q. The latter being the check, which was returned, "Insufficient funds"? [85]

A. Yes, that's right.

Q. But later, made good, in September of 1952, is that correct? A. Yes.

Q. But other than this \$800 and \$600, so to speak, had you discussed with him between May, 1952, and June, 1954, any balance that may be due you?

A. I don't believe there is any balance. I just knew that there was some money owing me, and when I did see him, I never wrote him, or called him in regard to it; it was just one of those things, when you owe somebody some money, when you see them, you put the bite on them.

Q. You knew, of course, you had turned over to him a thousand units, and did you know whether he had sold them during that period of time, or holding them or what?

A. Yes, I knew he had sold them.

Q. How did you know? A. He told me.

Q. Did he tell you how much he sold them for?

(Testimony of Earl B. Hayward.)

A. No.

Q. You didn't know how much money he owed you, I take it, is that it?

A. No, I never went—I never knew in dollars and cents, to the amount that he owed me, no, sir. I just knew he was still owing me some money, and when I would see him there, I [86] would ask him for it, and he said, "Well, just hold your horses; things will be coming along and then I will pay you."

So that is just the way it was, and I never pressed the issue, because I believed him. I think he is honest.

Q. Well, then, in June, on June 12th when you accepted his note for \$2,200— A. Yes.

Q. Is that the first time you knew how much was due you?

A. Oh, no, I had figured it out, but when it comes down to signing something with a definite amount, naturally I figured it out, it's just like anybody would owe you, say, \$500, and you get it back piecemeal, until you sit down and figure how much the fellow owed you during the months, you just figured he owed you some money, and when you saw him, you would say, "How about it now?" And until he paid you, you wouldn't know just how much—well, until you went back to your records and find out just how much you had marked down on the thing.

Q. This is at the risk of asking you something

(Testimony of Earl B. Hayward.)

you have already testified to, but I am sort of confused in my mind on one or two things here:

Had Mr. Pierce ever told you he had sold all of the thousand units, that you turned back to him? Had he told you during some period of time that all had been sold?

A. Yes, sir.

Q. When, do you recall? [87]

A. That I don't know.

Q. Well, would it be—

A. It would be—

Q. Would it be prior to May, 1952, or would it be after May, 1952? That is when you got your check for \$800 and \$600, respectively.

A. Well, to be exact, I don't know, but I would assume that it would be around that time.

Q. Around that time? A. Yes.

Q. Did he tell you how much that he had sold?

A. He never told me how much he got for them, no.

Q. He never told you?

A. I never asked him. I wasn't interested, because I knew what our agreement was.

Q. And your agreement was what?

A. Was \$3 for the first—

Q. 200?

A. 200 shares, \$4 for the balance, which was \$4.

Q. \$800? A. Yes.

Hearing Examiner: All right, anything further, gentlemen?

Mr. Tucker: If I may see these exhibits here—

(Testimony of Earl B. Hayward.)

Further Redirect Examination
(Continued)

By Mr. Tucker: [88]

Q. Now, that figure of \$4 a share I see is referred to here in this letter of March 3, 1952.

(Document exhibited to witness.)

A. Yes, here they are, both of them (indicating).

Q. Now, then, I see here on May 4, 1952, in Commission's Exhibit 2, there is a reference to that same figure in the first paragraph. The letter says:

"I've sold 200 units of your stock at \$4.00; therefore, enclosed you will find a check in the amount of \$800.00." A. Yes.

Q. And is that figure you have in mind of \$4 a share based on the statements in those letters?

A. No, apparently we had some conversation in regard to this before I sent him the stock. This is just as I see it here, confirming our conversation, because this is written from Las Vegas to me.

Q. Well, now, as I understand your testimony, in those letters, Mr. Pierce was to sell that stock for you? A. Yes, sir.

Q. You weren't selling it to him; he was to sell it for you, is that correct? A. Yes.

Mr. Tucker: No further questions.

(Testimony of Earl B. Hayward.)

Further Recross-Examination

By Mr. Sobieski: [89]

Q. And as I understand it, your understanding with Mr. Pierce was that you were to get \$3 a share for 200 shares, and \$4 for the balance, is that correct? A. Yes.

Q. And as long as you got that amount, you were satisfied, is that correct? A. Correct.

Q. And you never asked Mr. Pierce what he sold it for? A. No.

Q. And he never told you? A. No.

Q. And you weren't interested in what he sold it for, is that correct? A. No.

Q. I think you earlier testified that you were not interested in what Mr. Pierce owed it for. Was that—

A. It finally got around to that point. At the beginning I was interested, naturally, I wanted as much as I could get for it.

Q. Yes, but—

A. Which is only good business. I mean, I would be silly to say that I wasn't.

Q. Oh, yes, that is true. Now, prior to the time you decided to sell these shares, Mr. Hayward, you had become disturbed over the developments in the track, is that correct? [90] A. Yes.

Q. So the decision to sell at this time was your decision, is that—the one that you had made?

A. That's right.

(Testimony of Earl B. Hayward.)

Q. Made from your own study of the situation?

A. My own calculation of what I had decided I had better do.

Q. Yes. A. Before it was really too late.

Q. And then—

A. I had an opportunity before to sell them. He asked me, and I didn't want to.

Q. Yes. And then subsequently what had happened in the track, can you now recall?

A. Well, it just blew up, in plain—it just didn't work. It wasn't feasible under the management to go forward, as I saw it; although it was still there, the thing was under, the track was under construction still. They still had men there, but I couldn't see how it could possibly be ready, whether due to all of the ramifications of construction, which I know a little bit about, and how far they had to go to complete the thing, complete the track, for an opening date.

Q. Yes.

A. So I drew my own opinion on the situation.

Q. Well, now, did Mr.—when you say you drew your own [91] conclusions, was this the result of your investigation independent of Mr. Pierce?

A. My own observation. I had been over there, yes.

Q. Yes. And then after that, then you had this oral arrangement with Mr. Pierce, is that correct?

A. That's right.

Q. And the oral arrangement was that you were to get \$3 for 200 shares and \$4 for the balance, is

(Testimony of Earl B. Hayward.)

that correct? A. That's right.

Q. And that was irrespective of what Mr. Pierce would get for the shares, is that correct?

A. That's right.

Mr. Sobieski: No further questions.

Further Redirect Examination

By Mr. Tucker:

Q. When was that?

A. Well, that was in 1952.

Q. With reference to the time of these letters here? A. Yes.

Q. When was it?

A. That was before those letters were written. In other words, I had a conversation with John Pierce prior to these letters. Now, I don't recall whether it was in person or on the telephone, however.

Q. What was this statement you made a while ago about [92] originally wanting to get all you could out of him? A. Yes, sir, I did.

Q. Was that in connection with your conversations with Mr. Pierce? A. Sure.

Q. When was that?

A. That was in the beginning when we discussed this, selling the thousand shares.

Q. And what was said about that, what did you say and what did Mr. Pierce say?

A. Well, I can't tell you verbatim on that. However, I thought I had better sell a thousand shares,

(Testimony of Earl B. Hayward.)

and he said it was a good idea; and that I would like to get \$5 a share for them, what I paid for them.

Now, I don't know whether Pierce said "I think I can get it for you," or "I can get it for you, I can get more for you," or not, but at one time he said he could get more for me than what I paid for them, and I told him, I recall that I told him that I wasn't interested in making a profit on them, I was interested in getting out with what I had in it.

Q. When was this?

A. But I don't know when that conversation was. I am merely making that remark. But the thing I think that is important is the fact that we did settle on an agreed amount.

Q. When did you settle on that agreed amount? [93]

A. When I sent him the shares of stock, through the mail. I sent him a thousand shares, and that was the agreement.

Q. Did you write a letter to that effect?

A. No, I didn't.

Q. What was your agreement?

A. The agreement was that I was to get \$3 for the first 200 shares, and \$4 for the balance. I believe that letter is the letter that he wrote me back, is that not right?

Q. That is the letter of March 3, 1952?

A. Yes.

Mr. Tucker: Commission's Exhibit 1.

No further redirect.

(Testimony of Earl B. Hayward.)

Examination

By Hearing Examiner:

Q. If this record can be straightened out, I will have to do so. There is some confusion in my mind, and I am not sure that the record doesn't evidence the same confusion. Whatever the facts are, is what we want. And let's spend a moment or so trying to tie some of these loose ends up, if we can.

A. Yes.

Q. I have here in my notes a statement that you said you wanted to get all you could get.

A. That's right.

Q. And that in the light of your having paid \$5 per unit [94] for this, you wanted to get your money back if you could? A. That's right.

Q. Did you tell Mr. Pierce that? A. Yes.

Q. When you sent the shares to him?

A. Now that's what I don't recall.

Q. When did you send the shares to him then?

A. I sent the shares to him prior to September.

Q. Prior to when, Mr. Hayward?

A. September of 1952.

Q. Prior to September of 1952. Well, actually here—

A. I think it was in August of 1952 that I sent him the stock.

Q. Well, now, on March 3, 1952, as shown by Commission's Exhibit 1, Mr. Pierce sent you a letter in which he enclosed, he says he enclosed a check

(Testimony of Earl B. Hayward.)

for \$600 for 200 units of stock. At that time had you sent the thousand shares to Mr. Pierce?

A. Yes, I had.

Q. So you had really sent it prior to March?

A. Yes, I had.

Q. Of 1952, hadn't you?

A. Yes, I had. Well, that is certainly obvious. Why would he be sending me a thing that he didn't have?

Q. That's what I wanted to do, straighten out the record.

Now, in May, on May 14, 1952, Commission's Exhibit 2, [95] which is a letter from Mr. Pierce from Las Vegas to you at Santa Barbara, in which among other things he says, "I've sold 200 units of your stock at \$4.00; therefore, enclosed you will find a check in the amount of \$800.00," that is the \$800 check apparently he refers to in the exhibit marked Commission's Exhibit 3 and which I am showing you at this time, is that right?

A. That's right.

Q. So prior to March and May you had sent the thousand shares through the mail from Santa Barbara over to Las Vegas, Nevada, hadn't you?

A. Yes.

Q. And was it at that time or about that time, your best recollection you told him you wanted to get all you could out of it, is that correct?

A. That is right.

Q. That is the language I have here that you used. Is it fair to say that the receipt of Commis-

(Testimony of Earl B. Hayward.)

sion's Exhibits 1, 2, and 3, being the letters that I have just shown you here and which you may see—that you thought this remittance gave you all you could get out of it?

Mr. Sobieski: If Your Honor please, may I object to the question?

Hearing Examiner: You may object.

Mr. Sobieski: I think it is leading and suggestive, and also I think it is contrary to the witness' testimony, that the [96] deal was that he was to get \$3 and \$4 regardless of what Pierce sold them for.

Hearing Examiner: I sustain the objection. I am just trying to straighten the record out here. It doesn't matter which way the record goes, just so we get a record that is straight. I have to get something that I can operate on some time, and whatever the evidence is, is what we are looking for.

Q. (By Hearing Examiner): You said something a while ago about \$3 and \$4 per share, and I have a quote here in my notes: “* * * irrespective of what Mr. Pierce was to get for the shares.” I think that was in answer to a question put to you by Mr. Sobieski, “\$3 or \$4 irrespective of what Mr. Pierce was to get for the shares.” Was that your understanding? You didn't care whether he sold them for \$10 or \$20, just so you got \$4, is that your testimony? That is all I want to know.

A. Yes.

Q. When did you come to that understanding?

A. Well, at the time that I thought they were practically—when I couldn't get my \$5 for them,

(Testimony of Earl B. Hayward.)

and stocks were not selling, I thought I was fortunate in being able to recover \$3 and \$4 for them.

Q. Can you spot that time, as to when you arrived at that conclusion? Was it in 1954, or was it in 1952?

A. It was in 1952. In 1954—you see, the agreement [97] was made in 1952, and all of this time went by and I didn't get any money. So had the stock gone up sky high, I knew that he had sold the stock; at whatever figure he had sold them, I don't know, but all I knew, our agreement was at this \$3 and \$4, and that is what I expected.

Q. In spite of that, you say, you say you wanted to get all you could get, Mr. Hayward?

A. Yes, that was my first impression, that is what my first want was, yes.

Q. Back in 1952? A. Yes, that's right.

Q. Well, you got remittances back here?

A. But I agreed to take \$3 and \$4 for them.

Q. But you got remittances back here of \$600 and \$800, respectively? A. Yes.

Q. All right, at that time had you had any agreement what you were to get? A. Yes.

Q. What was that agreement based on, if anything?

A. On the current demand of what he could—

Q. Current price of the stock, was it that?

A. Yes.

Q. Are you sure of that?

A. Well, it is what you could get, in other words, I [98] don't know what the market value of the

(Testimony of Earl B. Hayward.)

stock was, because I am not there, I don't know anything about stocks.

Q. Did the \$600 payment and the \$800 payment represent what you thought the going price of the stock was?

Mr. Sobieski: Object; leading and suggestive, Your Honor, I think he has testified definitely what the agreement was, and I think that is the story.

Hearing Examiner: Well, I want to find out—

Q. (By Hearing Examiner): I am not suggesting anything to you, but I want to find out what you knew and what you expected, if anything, at that time? A. Well, I have told you.

Q. I still don't understand.

Hearing Examiner: All right, I don't quite understand. I will let counsel go ahead.

Further Redirect Examination
(Continued)

By Mr. Tucker:

Q. Where did this \$3 figure come from and where did the \$4 figure come from? You talked with Mr. Pierce about his selling this stock for you. Now, how was that \$3 figure fixed, and how was that \$4 figure fixed?

Mr. Sobieski: Object on the ground it is immaterial.

Hearing Examiner: That is material; objection overruled. [99]

Q. (By Mr. Tucker): Were those figures sug-

(Testimony of Earl B. Hayward.)

gested by Mr. Pierce, what he could get for the stock?

Mr. Sobieski: Objected to as leading and suggestive, to his own witness.

Hearing Examiner: You may answer, if you can.

The Witness: I don't recall, actually.

Hearing Examiner: Well, I am going to be obliged to ask a question here, and a question to which Mr. Sobieski may want to object.

Examination

By Hearing Examiner:

Q. I want to find out whether the sale of the 200 units, at \$3 per unit—how was that \$3 arrived at, that's what I want. Do you recall, how was the \$3 figure arrived at?

Mr. Sobieski: Object on the grounds it is incompetent, irrelevant and immaterial in this proceeding.

Hearing Examiner: Objection overruled.

The Witness: Well, I imagine it was—

Q. (By Hearing Examiner): No, you can't imagine; don't agree to anything that is suggested. Was anything said between you and Mr. Pierce here with reference to getting the market value, the market price?

Mr. Sobieski: Objection, on the grounds it is leading and suggestive. [100]

Q. (By Hearing Examiner): All right, was anything said, was anything said in your conversa-

(Testimony of Earl B. Hayward.)

tions with Mr. Pierce with reference to getting the market price?

Mr. Sobieski: Object to that as leading and suggestive, leading the witness.

Hearing Examiner: Objection is overruled.

Q. (By Hearing Examiner): All right, what is the answer?

A. I would say that he said he could get so much for it, and I agreed to it, "O.K., let's have it. If you can get \$3 and \$4," whatever it was, and I agreed to it. It had to come from some place, that's for sure, or it is still reasonable to assume that I said, "If you can get \$3 and \$4 for this, you go ahead and sell it, and here it is."

Q. All right, but do you know you said that; we want to know about what you said, if you can spot this.

A. Honestly, I can't tell you.

Q. Yet, at one time you said you wanted all you could get out of it? A. That's right.

Q. You wanted to get your \$5?

A. That was when this thing was—it was slipping, and that's what I wanted, yes. And then the stock didn't sell, I mean, he had it there for a while, it didn't sell, he didn't [101] find a buyer for it, and I think he called me and we talked about it again, then I was willing to get out what I could.

Q. Were you having conversations—

A. Yes.

Q. —at that time with Mr. Pierce, with reference to the lay-out of the plant, or the prospects?

(Testimony of Earl B. Hayward.)

A. Intermittently, I had talked to him, yes. He had been to Santa Barbara and I had been over there.

Q. You said you made from your own calculations here, certain determinations or decisions; what do you mean?

A. When I decided to sell it, the fact that this track was not progressing, enough men on it and so forth, to open at the time their opening date stated; they had delayed opening it once, and had advertised it being opened at a later date, which I could not see, and that's when I decided that it was time to get out and sell some of my stock.

Q. Had Mr. Pierce said anything to you about prospects, had he discussed the looks of the situation?

A. I suppose we had talked about it, but it was my opinion to sell a portion of my stocks.

Q. Mr. Hayward, how could it possibly be your opinion, unless you knew something about that, and you went over there regularly and collected on this? You had to rely on somebody, didn't you?

A. Yes, I did. [102]

Q. You are a businessman?

A. I went over there, too.

Q. Whom did you talk to over there?

A. I went there myself.

Q. Where? A. Dr. Pierson and I.

Q. Dr. Pierson? A. Yes.

Q. Well, can you tell whether a race track is progressing as fast as it could be? A. Yes.

(Testimony of Earl B. Hayward.)

Q. Are you wised up on those things?

A. I really am.

Q. What is your background in racing?

A. Not on a race track.

Q. That is what I am speaking of.

A. No, that's true.

Mr. Tucker: Construction?

The Witness: Just construction.

Q. (By Hearing Examiner): Have you talked to Mr. Pierce or his counsel today?

A. I talked to Mr. Pierce today.

Q. About what? A. Well——

Mr. Sobieski: Object on the grounds it is immaterial, [103] Your Honor.

Mr. Tucker: I think it is proper.

Hearing Examiner: It may be, but we have to get a record one way; the fact that Mr. Sobieski substantiates respondent, I am glad to have it, but we must have a record, either for or against, and it just doesn't matter to me what the testimony is; as long as we can get something we can use, I will be delighted, if it is possible to find facts wholly in favor of your client; but I want a record.

Mr. Sobieski: It means the Commission has failed to prove their case, Your Honor.

Hearing Examiner: Yes, but there is an obligation directly thrust upon the Hearing Examiner, making a trip of several thousand miles out here and back again, to see a record is built, if one can be built, and while the primary obligation is not on

(Testimony of Earl B. Hayward.)

the Examiner by any means, nevertheless, I would like to exhaust this witness, if we possibly can—I don't mean physically, but I would like to get out of you what you know. As long as you testify to your best recollection, that is all that matters.

The Witness: All right.

Hearing Examiner: All right, any further questions?

Further Redirect Examination
(Continued)

By Mr. Tucker:

Q. You had a conversation with Mr. Pierce today about [104] this matter? A. Yes.

Q. He did pay you \$200 today? A. Yes.

Q. I ask you whether or not he made a statement to you to this effect, that in the event he was unable to get this registration he would be out of business and wouldn't be able to pay you off?

A. No, sir, he did not.

Q. Nothing of that kind to you?

A. No, sir.

Mr. Sobieski: I object.

Hearing Examiner: The answer has been given. It is all in your favor.

Did you discuss what testimony you would give here today with Mr. Pierce?

The Witness: No.

Hearing Examiner: You didn't discuss with him in any respect what you were going to say here?

The Witness: No, sir.

(Testimony of Earl B. Hayward.)

Hearing Examiner: No one else connected with the case?

The Witness: I talked to Mr. Burr, before I came in here.

Hearing Examiner: He represents the Commission.

The Witness: Oh, yes.

Hearing Examiner: Anything further, gentlemen? [105]

Q. (By Mr. Tucker): In answer to a question by the Examiner, you said that Mr. Pierce told you he couldn't find a buyer?

A. Pardon me?

Q. I say, you made a statement just a few moments ago to the Examiner that at one point Mr. Pierce told you he couldn't find a buyer. Have I got this down incorrectly? Later, he said that he could find a buyer. Do you recall? You just said that a few minutes ago. Do you remember saying it?

A. He could not find a buyer?

Q. Yes, and then you said he later called you back and said he could find a buyer?

A. Well, I think that was relative to the stock at \$5 a share, we will put it, and later called, we were talking, that he had a buyer for \$3 and \$4.

Q. And was that when you agreed to send the stock over when he told you he had a buyer at \$3 and \$4? A. Yes.

Mr. Tucker: No further questions.

(Testimony of Earl B. Hayward.)

Further Recross-Examination

By Mr. Sobieski:

Q. Now, Mr. Hayward, you say that Dr. Pierson has had some experience with race tracks?

A. He has been interested in them, yes. I don't know how much experience, as far as owning stock. [106]

Q. I see. And did you consult with Dr. Pierson prior to making your original purchase?

A. Yes.

Q. And as I understand it, it was at Dr. Pierson's suggestion that you went to Las Vegas, is that correct? A. That is correct, yes.

Q. And prior to going to Las Vegas at the instance of Dr. Pierson, had you ever met Mr. Pierce?

A. No.

Q. Now, with Dr. Pierson's assistance you made an investigation of the track, did you, before you purchased? A. Yes.

Q. Then when the decision came later on in 1952 to sell—tell us what you did before arriving at that decision to sell, whom did you consult with and what investigation if anything did you make?

A. Well, I had been over there several times and it wasn't progressing as I know construction to go.

Q. Yes.

A. I mean, I am not a beginner; that is my business. I am around construction all the time, and I

(Testimony of Earl B. Hayward.)

know what has to be performed first before something else can go on. I have a pretty good idea as to how much work there was to be done at the time that they said they were going to open, and it was at that time that things didn't look too good to me, but as I went [107] back to the office of the Thoroughbred Racing Association they were going to put on, I think 85 more men the next Monday; I was there on a week end. They all assured me they were, things were going forward, and things could really be knocked out.

Q. Who assured you of these things, Mr. Hayward? Can you remember any of the people?

A. Well, John Pierce, Mr. Smoot, and Mr. John LaFortune, I mean, they were all in agreement that things were really going to get rolling. So the next time I went over, there wasn't that many men there, I couldn't see any progress in the track, and so that's when I decided the time was to get out, with what I could.

Q. And you made that decision based on your own judgment of the way things were progressing as a matter of building, is that correct?

A. That's right.

Q. And you didn't need anybody to advise you on that phase, because you consider yourself competent to make a judgment, an informed judgment, as to whether a construction job is proceeding, is that correct? A. That's right.

Q. Now, then, at the time you had your discussions with Mr. Pierce about selling this, you had

(Testimony of Earl B. Hayward.)

known Mr. Pierce then for how long, had you known Mr. Pierce?

A. Oh, a couple of years, I guess, a year and a half, [108] about a year and a half.

Q. And at that time, as I understand it, you had the discussion with him; you are not sure whether it occurred over the phone or in Las Vegas, is that correct? A. No, I am not sure.

Q. And was it your understanding that Mr. Pierce might make a profit in your stock, or was that discussed? A. No.

Q. That was not discussed. And your conversation with him, as I understand it, was a flat figure of \$3 a share for some, and \$4 a share for others?

A. That was our agreement, yes.

Q. That was your agreement. And you never inquired of him what he actually sold it for, that's correct?

A. No, I don't know now what he sold it for.

Q. And you never considered it any of your business what he sold it for, is that correct?

A. Yes.

Mr. Sobieski: I have no further questions.

Hearing Examiner: Anything further, Mr. Tucker?

Mr. Tucker: Just one moment, please.

Hearing Examiner: Mr. Hayward, is this your testimony, that at no time were you concerned with what price Mr. Pierce may have gotten for the one thousand units of Thoroughbred Racing Association stock which you turned back to him? [109]

(Testimony of Earl B. Hayward.)

Mr. Sobieski: Object to that, Your Honor, on the grounds it has been asked and answered, probably a half a dozen times.

Hearing Examiner: I think you are almost right, Mr. Sobieski, but for the sake of me, I cannot fix in my mind, and I have had many years at this business, what the answer is. It just doesn't matter, as long as we get it accurate.

Mr. Sobieski: If Your Honor please, if it has been answered half a dozen times, I think that is given pretty accurately.

Hearing Examiner: I will rule on your objection. I am always reluctant not to sustain counsel's objection to a question made by the Hearing Officer, but the question, but the question has been asked in a number of forms.

Examination

By Hearing Examiner:

Q. Now, did you get my question I asked you? Do you want it read back?

The Witness: O.K., read it back.

Hearing Examiner: Read it back, Mr. Reporter.

The Reporter (Reading):

"Question, Mr. Hayward, is this your testimony, that at no time were you concerned with what price Mr. Pierce may have gotten for the one thousand units of Thoroughbred Racing Association stock which you turned back to him?" [110]

(Testimony of Earl B. Hayward.)

Q. (By Hearing Examiner): What is your answer?

A. When you say "at no time," certainly I was interested at one time.

Q. That one time was when, now?

A. That one time was when I sent him the stock; certainly I was interested in getting as much as I could for it, that is, all I wanted is what I had in it. Anything more than \$5 a share, I didn't care about, but I was interested in getting all of my \$5,000 back, but in a conversation, and I believe it was on the telephone, was that there was no buyer—I mean, it just couldn't be sold at that figure.

Q. Who said that?

A. John Pierce. And if I would take—or we agreed, I don't know whether he said "We will do that," whether I said "How much can you get for it," \$3 and \$4 was arrived at.

Q. When was that agreement arrived at?

A. That agreement was arrived upon—now, I don't remember whether it was before I sent him the stock, or afterwards, but I know there was a time after he had the stock that he hadn't sold it all. You follow me?

Q. Well, now, is this accurate or not:

After you received the \$600 check for 200 shares at \$3, and you received the \$800 check—

A. No, the agreement was before that.

A. Are you sure of that now? [111]

A. Yes, I am.

(Testimony of Earl B. Hayward.)

Q. What makes you sure of that, Mr. Hayward?

A. Because I wouldn't agree, I mean, he wouldn't arbitrarily send me an amount, without first agreeing upon it, I am sure.

Q. Well, now, are you sure of that? Are you sure of that?

A. Yes, well, I wouldn't swear to it, but—

Q. But you are under oath now, to give the best testimony you can.

A. That is what I am doing. If these things contradict that, they must be right, I must be wrong.

Q. Did you know on March 3rd when you got a letter from Mr. Pierce, in which he enclosed a check for \$600 for 200 units of this stock?

A. Yes.

Q. That he was selling it for \$3 a share, did you know that? A. Yes, I did know that.

Q. How did you know it?

A. Because we had agreed on it in our conversation, either by phone, and I believe it was by phone; or, I was going to say I was over there, but I don't believe I was, because—and talked to him. I think it was by telephone. However, he had my stock before he wrote me that letter. [112]

Q. Yes, he had your stock, because this represents a sale of a portion of it?

A. That's right.

Q. The question is—

A. And I know—I knew before he wrote that

(Testimony of Earl B. Hayward.)

letter, that I was going to get that, because that was no surprise to me.

Q. How did you know it?

A. Because we had discussed it.

Q. Where?

A. And I think it was by telephone.

Q. The sale of 200 units at \$3 per unit?

A. Yes, sir.

Q. Do you recall what transpired in this discussion? You say you think it was by telephone. Where did the—who originated it?

A. He called my office.

Q. He called your office in Santa Barbara?

A. Yes.

Q. What did he say to you and what did you say to him?

A. Well, it was just the fact that the time—he originally could get my money out of it, and I didn't want to sell it.

Q. But on this occasion, when he sold 200 units at \$3 a unit, he called you before he actually sold it, is that your testimony? [113]

A. Yes.

Q. What did he say to you?

A. That he could get me that money for it.

Q. He said he could get you \$3 per unit?

A. \$3 and \$4.

Q. He could get you \$3 and \$4 per unit, that's what he told you when he called you shortly before March 3, 1952, is that correct?

A. Yes.

Q. And what did you say to him?

A. I said, "If that's all you can get, let's sell it."

(Testimony of Earl B. Hayward.)

Q. "If that is all you can get, let's sell it"?

A. I wouldn't say those exact words, but I agreed upon it; as I said before, it was no surprise to me when the letter came with the money.

Q. Because it came back in an amount—

A. That we had agreed upon.

Q. That you had agreed upon? A. Yes.

Q. And what was the basis of that agreement, how did you happen to come to this agreement?

A. Because, I couldn't get \$5 a share for it and I was accepting less.

Q. How did you know you couldn't get \$5 a share for it?

A. Well, I believe at the time, I thought I was lucky to [114] get that.

Q. I know, but how did you know you were lucky to get that?

A. Because it didn't look like to me it would go.

Q. Where did you get your information, if you got any information, that you couldn't get \$5 a share, and agreed to this \$3 and \$4 a share, respectively? Did Mr. Pierce say anything to you about it? A. He probably did.

Q. Not probably, but what is your best recollection?

A. My best recollection was that that's what the tops was he could get for me.

Q. That is—

A. And I wanted to get, sell it, better take that for it. Now, I mean there is no—something would have to be said. If I said—

(Testimony of Earl B. Hayward.)

Q. Something would have to be said by whom, by Mr. Pierce? A. Yes.

Q. You agreed to take \$3 and \$4 a share dollars per unit?

A. Yes, he was the fellow who was selling it; I wasn't selling it.

Q. Well, did you know what these units were being sold for in the market at that time?

A. No. [115]

Q. You didn't know? A. No, I didn't know.

Q. Well, where were you looking, so to speak, for information, with reference to going prices, going values; were you looking any place?

A. No place; I run a business.

Q. Were you relying on Mr. Pierce to give you a figure that was fair and reasonable?

A. That's right. That's exactly what I thought. I bought them from him, no reason to doubt his integrity up to that point, and he was—and I had—as a matter of fact, offered to give him all my stock and let him sell it.

Q. You had full faith and trust and confidence in him, did you? A. Yes, I did.

Hearing Examiner: Any further questions?

Further Redirect Examination

By Mr. Tucker:

Q. Did Mr. Pierce say anything to you to indicate what business he was engaged in at that time?

A. At which time?

(Testimony of Earl B. Hayward.)

Q. The time he took these securities to sell for you. A. No, never asked him.

Mr. Tucker: No further questions. [116]

Q. (By Mr. Sobieski): Mr. Hayward, with reference to these things you have testified to, you earlier said that you did not ask Mr. Pierce what he had sold the shares for, and you didn't consider that as part of your business; that you had made a deal at \$3 and \$4, is that correct?

A. That's right.

Q. Well, now, do you intend any of the answers which you have given to the Trial Examiner's questions, do you intend any of those answers to change your testimony at all with respect to the fact that you didn't consider it was your business as to what Mr. Pierce sold the stock for?

A. No, I haven't changed my opinion on that.

Q. And, therefore, your thinking still is that, as long as you got \$3 and \$4 you were saved; that was your deal; is that correct? A. That's correct.

Q. Regardless of the fact that Mr. Pierce may have been able to sell them or did sell them at more than \$3 or \$4, is that correct? A. Yes.

Q. And you don't want any of your answers to the Trial Examiner's questions to be construed as changing that, because your deal with Mr. Pierce didn't depend on what Mr. Pierce could resell them for; is that correct? [117] A. That's right.

Q. If anyone should draw the inference that Mr. Pierce said that he was only getting \$3 or \$4 a share

(Testimony of Earl B. Hayward.)

for these, that would be a false inference, wouldn't it?

Hearing Examiner: What is that question?

Read it back, Mr. Reporter.

(Question read.)

Q. (By Mr. Sobieski): Did you understand the question, or shall I rephrase it?

A. Go ahead, rephrase it. I think I know it, but—

Q. Did you think that Mr. Piercee was perhaps going to make a little something on this transaction himself, being a businessman yourself, Mr. Hayward? A. I never thought about it.

Q. But you are clear that Mr. Piercee did not represent to you that \$3 or \$4 was all that he would sell them for?

A. Well, when he told me that's all he could get for them, I assumed that, you might say, yes.

Q. Well, did you say that you had made a deal?

A. That I had made the deal, so that point didn't come up, because I was going to get—I was going to sell the stock, and I got paid \$3 and \$4, it would be acceptable to me.

Q. Well, when you say that you didn't consider it any of your business if he got more than that, if you had had a deal [118] with him that was what he was going to sell them for, wouldn't it be your business if he got more than that?

A. You might say that it was and it wasn't. In one sense it was and again it wasn't

(Testimony of Earl B. Hayward.)

Q. How is that, Mr. Hayward?

A. Well, in the agreement—I mean in the beginning I wanted to get as much as I could for the stock.

Q. Yes.

A. And then I sent him the stock and he couldn't sell it for that, so it was a lesser amount, and I agreed upon the \$3 and \$4, but I would have liked to have had my \$5.

Q. Yes.

A. So I say again, that that is just the way I looked at it; in the beginning that is what I wanted, and I found out I couldn't get it, I was agreeable to take less.

Q. Did you make any afforts to sell it through any other— A. No.

Q. —place? A. No.

Q. Did you inquire what the market was?

A. No.

Q. Well, now, earlier this afternoon you told us, Mr. Hayward, that your recollection of this matter was somewhat hazy. We have asked you a lot of detailed questions about it. A. Yes. [119]

Q. And is most of this your actual recollection or is part of it your recollection plus your reconstruction of what probably happened?

A. Well, I would say, talking about all these things, it is a matter of recalling, one thing recalls another.

Q. Yes.

(Testimony of Earl B. Hayward.)

A. But I don't think you have asked me any difficult questions.

Q. Yes. Well, now, in connection with this sale, as I understand it, did you believe that Mr. Pierce was going to act without any compensation whatever in selling this stock?

A. Well, actually, that never—it never occurred to me, outside of the fact that I had bought the stock, and it was just a courtesy for him to sell my stock. That's the way I looked at it, and I was going to give them to him to have him sell them, and I assumed that he would get as much as he could get for them, leaving it entirely up to him. After all, I had given him the stock, signed it over to him, hadn't got a receipt for it or a thing.

Now, how much faith can you put in anyone? I gave him \$5,000 and actually I didn't get anything for it.

Q. You just had the certificates, is that right?

A. I gave him all the certificates; I gave him everything, and I signed it over to him. I mean, I think that he is honest and I think that he was going to treat me—I mean, [120] I had known him long enough, and I think I did know him.

Q. Yes.

A. I had nothing. I sent them in the mail, not registered—yes, I guess I sent them registered; however, that doesn't tell you what is in an envelope.

Q. That's right. But, of course, when he wrote you a letter, that was a receipt, I presume, in a way. But, as I understand it, you had two deals. First

(Testimony of Earl B. Hayward.)

he said he could get \$5 a share for you; first he said he could get more than you put him; wasn't that correct? A. Yes, that is correct.

Q. At that time you said you didn't want to sell?

A. Yes, right.

Q. Then later on, without any urging from him, you decided you did want to sell? A. Yes.

Q. And you sent these shares over?

A. That's right.

Q. And he told you that he couldn't make a deal for \$5 a share? A. Yes.

Q. Is that correct? And you did, however, as a result of a conversation with him, make a deal to sell them at \$3 and \$4?

A. Respectively, that's correct. [121]

Q. Now, you told me earlier that at that time you didn't consider it important as to what he sold those shares for, as long as you got \$3 and \$4 a share? A. That's right.

Q. And was that the actual understanding, that as long as you got \$3 and \$4 a share it didn't matter to you what Pierce sold them for; is that correct?

A. That is correct.

Q. That is still your understanding of the situation, is that correct? A. That's correct.

Mr. Sobieski: No further questions.

(Testimony of Earl B. Hayward.)

Further Redirect Examination

By Mr. Tucker:

Q. Is that because you felt that when you agreed that he could sell them for that price, you consented to his selling for that price you told us, that you have described here, that you felt you had committed yourself; is that the reason?

A. Well, I committed myself, and my word is my bond. On the other hand, that's all I thought. As a matter of fact, I didn't think how he was going to sell those, but in the condition the tract was in—but he did sell them. and that was our agreement, and that is what I expected.

Q. Now, referring to this letter of May 14, 1952, in which it says, "I hope to move the balance of 600 units of your [122] stock very shortly—"

A. Yes.

Q. Now, had you known at that time—well, let's just assume at that time that—and this is just an assumption—that you had information to the effect that Mr. Pierce had sold, say, the first units at \$6 a share; would you have considered yourself committed to this price of \$4 a share for the remaining 600 units?

Mr. Sobieski: Object as hypothetical and argumentative.

Hearing Examiner: Are you going to be able to show that his stocks at that time had been sold at \$6 a share?

(Testimony of Earl B. Hayward.)

Mr. Tucker: I expect to do so.

Mr. Sobieski: I don't think so.

Hearing Examiner: On that assurance, you may answer the question. Have you got the question, Mr. Hayward?

The Witness: Yes, sir.

Hearing Examiner: All right.

The Witness: Well, that's a hard question to answer, in lieu of the fact that I had been losing money, and if there was a possibility of picking up more money, I would have liked to, certainly.

Does that answer your question?

Q. (By Mr. Tucker): I notice here he says he still has 600 shares he is going to sell for you in the future, and my question is, if you [123] had conversation at that time that—

A. I didn't have that information.

Q. I know you didn't have. But I am trying to find out as much as we can about this understanding you had at \$4 a share.

Hearing Examiner: He has answered that.

Mr. Tucker: All right, your Honor. Thank you. No further questions.

Mr. Sobieski: No further questions.

Hearing Examiner: Mr. Hayward, thank you very much. We are sorry to hold you over here unduly.

The Witness: Thank you.

(Witness excused.) [124]

CHARLES R. BURR

was called as a witness, and having been first duly sworn, was examined and testified as follows: [127]

* * *

Voir Dire Examination

By Mr. Sobieski:

Q. With respect to this exhibit, Mr. Burr, Exhibit 5 for identification, that purports to show that certain shares were transferred from one certificate to another certificate in various cases. Did your examination show who it was that directed that that certificate in each case, that the transfers were made? [139]

A. No, I made no examination to ascertain how that particular certificate got to the transfer agent.

Mr. Tucker: It must be recognized that the order of proof, of course, is piecemeal and we can't always have the cart and horse properly in front of each other and we must proceed with other evidence that will relate to some of these transactions not presently in the record.

Mr. Sobieski: We will, the respondent objects at this time to Exhibit No. 5 on the grounds that there has been no proper foundation laid, that it is incomplete and selective list and that the books on which it is based are not available for cross-examination at this time.

Mr. Tucker: We will submit Mr. Burr for cross-examination in Las Vegas if so requested.

Hearing Examiner: I think our discussion cov-

(Testimony of Charles R. Burr.)

ered most of that. I observe that that is a good objection. That is, in the ordinary course of events that even though these transactions with no showing of the complete transaction, even though called for the purpose of showing what is alleged to be violations by the staff of the Commission, that wouldn't disqualify the document. I don't think the staff has an obligation thrust upon it to show the complete full transactions where, presumably, many of the transactions, if there were additional transactions, may be quite in order. I think there has been sufficient showing to justify the reception in evidence and [140] the objection will be overruled and the document will be received.

(Commission's Exhibit No. CX-5 was received in evidence.)

Direct Examination
(Continued)

By Mr. Tucker:

Q. Please explain, now, what the columnar headings referred to on the first page, Mr. Burr.

A. Reading from the left of the first sheet, having to do with common shares, shows the date of the original issuance of certificates. The second column shows the certificate number. The third column, the number of shares.

Hearing Examiner: I don't think it is necessary to read all that into evidence.

Q. (By Mr. Tucker): There is one column, the fifth column that should be explained. What is the

(Testimony of Charles R. Burr.)

significance of the date appearing in the fifth column?

A. That is the date of the original issuance of the certificate, number follows, which certificate number 4489 refers to 1,000 common promotion shares issued to Herman Miller, June 27, 1950.

Hearing Examiner: Did certain of these shares have to be registered and certain not have to be registered?

The Witness: Yes. [141]

Hearing Examiner: Which had to be registered?

The Witness: The ones publicly offered and certain of promotion shares issued to the principal promoter were registered in order that he be in a position to use them in promoting the funds for the track.

Q. (By Mr. Tucker): Now, will you refer to the page of that exhibit which is captioned—

Mr. Sobieski: If I may make a comment, if any point is to be made that shares were being unregistered, I don't think there is anything in the Order for hearing that charges people being unregistered and that is certainly something peculiarly within the knowledge of the Commission and if we are to be charged with it, we certainly ought to have a little notice on that point so I object to this exhibit being used for any such purpose as that as being outside the issues in the case.

Mr. Tucker: That is not the purpose that we have. That is an incidental matter that comes in incidentally.

(Testimony of Charles R. Burr.)

Hearing Examiner: Perhaps I provoked the answer and if so, it's—

Mr. Sobieski: Incidentally or not, I object to it being used against the respondent unless he has notice of the charge.

Hearing Examiner: It will not be used at all, that portion.

If there is anything else, Mr. Tucker, in this document [142] that requires explanation, I think that is very well, but the obvious things here, you needn't touch on.

Mr. Tucker: I want to go down to explain it now. That is what I have in mind, your Honor.

Q. (By Mr. Tucker): Mr. Burr, will you turn to the page captioned "Prepared from Journal and Ledger of Las Vegas Thoroughbred Racing Association, 72154 by Charles R. Burr and Clifford L. Roop." Now, does that reflect certain transfers of preferred shares of the Association?

A. Yes, it does.

Q. Now, is there anything in that to indicate what the records of the Association show with respect to the time of the surrender for cancellation of any shares? A. Yes, dates.

Q. Where is that on this exhibit?

A. Well, reading from the right to the left, on February 21, 1952, Certificate 9605 was issued for 500 shares in the name of Mr. Fox. That certificate was transferred from Certificate No. 5111, registered, recorded in the name E. B. and C. Hayward

(Testimony of Charles R. Burr.)

which certificate had been issued on November 21, 1950, as an original issuance.

Q. What is the significance of the column of dates immediately following—I will go by number—the fifth column? [143]

A. Well, that is the date of the transfer of the certificate recorded in the name Earl B. Hayward.

Q. So that that column shows the record date of transfer of the certificates described in the first four columns? A. That's right.

Q. If I understand you correctly, then, Certificate No. 5111 for a thousand shares of preferred stock issued in the name of E. B. or C. Hayward, originally issued November 21, 1950, was transferred to February 21, 1952, is that correct?

A. That's correct.

Q. Now, on that same date were certain other certificates transferred?

A. Yes, total of 1275 shares were transferred. Those 1275 shares were represented by four separate certificates.

Q. Those are the first four on the schedule, is that correct? A. Right.

Q. Being those to Randolph—

A. Hayward and Weinshenk.

Q. Now, does this exhibit reflect what certificates were issued against that transfer? A. Yes.

Q. Where does that appear?

A. In the last two, the last three columns, the number of the new certificate and the number of

(Testimony of Charles R. Burr.)

shares and the name [144] of the person to whom the new certificate was issued in each case.

Q. What are the certificates then as shown on this exhibit that were issued against the 1275 shares transferred on that date?

A. Certificate 9604 was issued in the name of J. Pierce for 775 shares and Certificate 9605 was issued to Mr. Fox for 500 shares.

Q. Do you have further information about the name of this Mr. Fox to whom that was issued?

A. I don't have the further information on this schedule but——

Q. Have you talked to a Mr. Fox?

A. Yes, and talked with Mr. Fox and have seen Certificate 9605.

Q. In his possession? A. His possession.

Q. That is Mr. William Fox whom we expect to have here as a witness? A. That's correct.

Q. What does this schedule show with respect to the disposition made of Certificate No. 9604 for 775 preferred shares to J. Pierce?

A. That certificate issued February 21, 1952, was thereafter on March 25, 1952, transferred 500 shares to Ramlos [145] and the remaining 275 shares to Pierce, the certificate Ramlos being Certificate 9615 and 275 shares to Pierce being Certificate 9616.

Q. In the course of your investigation did you interview Ramlos? A. Yes, I did.

Q. Did you see Certificate 9615 in the possession of Ramlos?

(Testimony of Charles R. Burr.)

A. No, I did not see the actual certificate in the course of my talk with Mrs. Ramlos.

Mr. Tucker: We expect to call Mrs. Ramlos as a witness, Your Honor.

Q. (By Mr. Tucker): Now, what does this schedule show with respect to the disposition made of Certificate No. 9616 issued March 25, 1952, for 275 shares to Mr. Pierce?

A. That certificate issued March 25, 1952, was on the following day transferred along with other certificates totaling 420 shares as follows: 400 shares to Fox in Certificate 9618, 10 shares to W. A. Albury, Certificate 9623 and 10 shares to J. Pierce, Certificate 9624.

Q. In other words a block consisting of 420 shares standing in the names of Randall, Albury, Pierce and Dickinson was then surrendered and in exchange for two groups of certificates there were issued the three you have just described? [146]

A. That is correct.

Q. It is your understanding that the stock of this company was sold in units consisting of common and preferred stock?

A. At par, par value of the preferred being \$4.95 and common five cents par.

Q. And when originally sold in connection with original distribution, it was sold at \$5.00 per unit consisting of one share of preferred and one share of common, is that correct?

A. That's correct.

Q. Under the Prospectus previously introduced?

(Testimony of Charles R. Burr.)

A. Yes.

Q. Will you refer to the page of this exhibit that reflects transfers of the companion common stock that matched the preferred stock in these transactions? I believe the lower half of the page captioned "Prepared from Journal and Ledger and Certificate Stubs and Certificates of Las Vegas Thoroughbred Racing Association Records, 72154" reflects the information I want.

A. The third page of this?

Q. Yes, the lower half of the page after the total 1300. Does that show the surrender of a certificate issued in the name of Hayward in the sum of a thousand shares No. 5918 originally issued November 21, 1950? [147] A. Yes, it does.

Q. And when was that, what do the answers on the book show about that certificate?

A. That certificate was transferred on February 20, 1952, 400 to Fox and 600 to Pierce, the 600 to Pierce being shown on the records of the Association under date of February 21, apparently an error in the Association's dating of the item. The transfer then made was somewhat involved. The Hayward certificate, a certificate for 50 shares in the name of Randall, a certificate for 25 shares in the name of Randall, and a certificate for 200 shares in the name of Weinshenk, all being involved in the transfer. The transfer being to Mr. Fox, 400 shares; Mr. and Mrs. Coffee, 100 shares—

Mr. Sobieski: Your Honor, I'm a little confused and perhaps Mr. Burr can straighten it out so we

(Testimony of Charles R. Burr.)

can understand it. Does that mean Mr. Fox got 800 shares? You previously stated Mr. Fox got 400 shares, I thought, from the 1000 shares?

The Witness: No, I'm summarizing the whole transfer that occurred on February 20 or, possibly, February 21, as one of the certificates is dated.

Mr. Sobieski: As I understand it, 400 went to Fox and 600 to Pierce. That would take care of the thousand from Hayward?

The Witness: Yes, that is true, but involved in the transfer occurring on that date, also, are certificates in the [148] name of Randall and Weinschenk.

Q. (By Mr. Tucker): Would this explain it, Mr. Burr, that there were surrendered for transfer on that date certificates aggregating—

A. 1275 shares.

Q. —1275 shares including 1000 shares of Mr. Hayward's? A. That's correct.

Q. And that out of those certificates on that date there were issued a certificate for 400 shares to Mr. Hayward being 10591?

A. That is to Mr. Fox.

Q. I mean to Mr. Fox being 10951—

Hearing Examiner: Not 10951.

Mr. Tucker: 10591, and Certificate 10592 for certificate shares to Coffee and Certificate No. 10593, also, for 50 shares to Coffee and Certificate No. 10594 for 775 shares to Pierce?

The Witness: That's correct.

(Testimony of Charles R. Burr.)

Q. (By Mr. Tucker): Is that a correct summary of transactions reflected by this exhibit?

A. Yes.

Q. So there were certificates reflecting 1275 shares resaved and a total of certificates just described issued to Fox, the two Coffees and Pierce is 1275 shares? [149] A. Correct.

Q. Does the exhibit further reflect the disposition of Certificate 10594 for 475 shares issued to Mr. Pierce on that date?

A. Yes, on March 25, 1952, that certificate was transferred 500 shares being reissued in the name Ramlos and Certificate 10608 and the balance, 275, being reissued in the name of Pierce, Certificate 10609.

Q. Now, then, does this exhibit further reflect the disposition of Certificate No. 10609 for 275 shares issued to Mr. Pierce? A. Yes.

Q. What became of that?

A. That certificate was combined with Certificate No. 6369 for 100 shares and 2622 for 25 shares in the names of Smoot and Randall, respectively.

Q. How much does that total?

A. Making a total of 400 shares and those 400 shares were issued in Certificate 10612 in the name of William Fox.

Q. And the date and record of that?

A. March 26, 1952.

Q. So that according to this, the preferred and common shares of Earl Hayward reflected by the two certificates previously described, to wit, 5918

(Testimony of Charles R. Burr.)

for a thousand shares of common stock and 5111 for a thousand shares of preferred stock, [150] those certificates originally transferred February 21, 1952, and out of them, 500 of preferred and 400 of common went to Mr. Fox and that by March 26, all of the stock derived from Certificates No., Hayward certificates above describes a thousand shares, each had been transferred out on the books of Las Vegas Thoroughbred Racing Association?

Mr. Sobieski: Objection, complex, compound, calls for a conclusion of the witness.

Hearing Examiner: It may be all of that. I got to have somebody to summarize it and I want the reporter to read it back and see if we can't. I want to get the full meaning of it and see if Mr. Burr can answer the question on it.

Mr. Tucker: May I restate it? I may be able to simplify it.

Q. (By Mr. Tucker): Does this exhibit demonstrate, Mr. Burr, that by March 26, 1952, all of the Hayward stock, common, preferred, a thousand shares of each had been transferred on the books into other certificates? A. Yes, that is correct.

Q. And that on February 21, 1952, that stock was originally surrendered for transfer and the first certificate out of it was issued against it?

A. That's correct. [151]

* * *

Q. Was there another occasion when you discussed with Mr. Pierce the matter of his registration with the Commission as a broker-dealer?

(Testimony of Charles R. Burr.)

A. Yes, the next occasion that I recall was when I called at his home on, I believe, May 15, 1952, in the meantime, a number of transactions affected by him having come to our attention and some inquiry with reference to them having been made.

Q. And what was said on that occasion and who was present?

A. Mrs. Pierce in addition to Mr. Pierce and I was [260] present. At least, part of the time. I'm not certain she was present throughout the discussion. And in the living room of his home, then, on, I believe, Bracken Street, or Avenue, Las Vegas, the conversation was brief.

I told them that it appeared very definitely, the information I had as to transactions he had been effecting and the manner in which he had been operating, that he should register with the Commission as a broker-dealer and as to why he hadn't done so. He said he was trading on his own account; he did not feel that registration was necessary, but he had no objection to registration and would apply.

I offered, or he requested that I send him forms of application, which I did when I returned to Los Angeles within a day or two thereafter.

Q. Were any other subjects discussed at that conference? A. Not that I recall.

Q. When was the next time that you discussed the matter with him?

A. Next time I recall was in the course of one of the Chapter 10 proceedings in the corridor of

(Testimony of Charles R. Burr.)

the second floor of the Federal Building during a brief recess.

Q. Was there anyone beside Mr. Pierce present at that conversation? A. There was not.

Q. What was said? [261]

A. I called his attention to the fact——

Mr. Sobieski: Give the approximate date of this.

The Witness: Yes, October, I believe, the 8th of October, 1952.

I stated to him in substance that I knew he had not registered and couldn't understand why he had disregarded the statements that had been made to him by both Mr. LaFortune and me. And he said that he didn't think his registration was necessary and I think, if my recollection serves me correctly, that it was on this occasion that he said that his belief was that registration was unnecessary and that was, at least, partially borne out by the fact that the Commission had taken no action, notwithstanding my repeated statements to the effect that he should, ought to register. He said that he had dealt exclusively for his own account and he still believed registration was not necessary.

I asked him if he hadn't in certain transactions dealt as agent for others and he said he had not.

I said, "Now, is that true as to the transactions effected with Mr. Hayward of Santa Barbara?"

To which he replied, "I may have slipped up in that one instance."

Q. Was there any further discussion of the Hayward transaction at that time that you recall?

(Testimony of Charles R. Burr.)

A. Well, my notes would show. It may have been on that [262] occasion that he advised me he had settled his account with Mr. Hayward. I believe it was on that occasion. It was either then—yes, I'm sure that it was on that occasion that he said he had, in any event, settled his account with Mr. Hayward which occasioned one of my subsequent telephone calls to Mr. Hayward.

That is all I recall of the discussion.

Q. Did you see him again in the spring of 1953?

A. Yes, chance meeting on Third Street just north of Fremont almost in front of the office of Kalmanir Kline & Company, a then registered broker-dealer firm of Las Vegas. A brief conversation. Mr. Pierce was—

Mr. Sobieski: When was this?

The Witness: This was, I can't find any written memorandum of it. I fix the time as approximately the spring of 1953. It was casual and the conversation was brief and to the effect that his conversation being to the effect that he doubted necessity for registration and, also, stated on this occasion that there was another reason why he hadn't registered, that reason being he was uncertain as to whether he would remain in the business.

Q. (By Mr. Tucker): Now, in any of these conferences, did you discuss in some detail the use of the mails in interstate commerce and so forth in effecting transactions; in other words, did you [263] undertake to spell out to him the provisions of Section 15?

(Testimony of Charles R. Burr.)

Mr. Sobieski: I object on the ground it is leading and suggestive.

Hearing Examiner: Well, I think the witness can testify as to what he actually said and did on that occasion.

What transpired between you and Mr. Pierce?

The Witness: It was spelled out very definitely upon the first, the occasion of the first discussion I had. The date of which I fixed as early in September of 1951 and in Mr. LaFortune's office, in his presence.

Mr. Sobieski: I move to strike the answer as not responsive and calling for the conclusion of the witness.

Q. (By Mr. Tucker): Can you tell us what you told him on that occasion?

Hearing Examiner: What was immediately preceding?

(The answer was read.)

Hearing Examiner: The motion to strike is granted.

Q. (By Mr. Tucker): What did you say to him on that occasion, Mr. Burr?

A. I don't recall except that in substance he was told not to transact business and securities not purely interstate which would require his registration and that the extent of the distribution of the race track securities which had some 6,000 more shareholders was generally referred to.

Q. After the spring of 1953 was there again

(Testimony of Charles R. Burr.)

any [264] discussion between you and Mr. Pierce about the matter of registration with the Commission?

A. After?

Q. The spring of 1953?

A. I think the next occasion was about May this year when he called at our office.

Q. What was the discussion at that time?

A. At that time he had with him and delivered to me an executed form BD or 3M, I don't know which form, whether form BD had been adopted at that time, but the form had been executed and he left it with me for mailing.

He asked me whether in my opinion the Commission would permit his registration to become effective. I asked him whether he had settled his account with Mr. Hayward, and he replied that he had, that it had taken him some time to settle it, but he had finished, finally accomplished that, and Mr. Hayward had been paid in full.

Incidentally, I think I have testified that this was the last conversation I had, I had this conversation in my hotel room in Las Vegas during the course of which Mr. Pierce said he did not recall having told me that he had paid Mr. Hayward in full, which he said that he did recall having told me that he had settled with Mr. Hayward. He said he told me that because he intended to settle with him.

To return to the conversation of May of this year in our [265] office, in answer to his question whether the Commission would permit his registration to become effective and following his statement as to hav-

(Testimony of Charles R. Burr.)

ing settled with Mr. Hayward, I stated to Mr. Pierce that I couldn't speak for the Commission, didn't know what the Commission would do but that I would forward the application without adverse recommendation.

Hearing Examiner: Is that 3M or BD?

The Witness: BD is the form now.

Hearing Examiner: Application for registration?

The Witness: Yes. [266]

* * *

WILLIAM E. FOX

was called as a witness for and on behalf of the Commission and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tucker:

Q. Your name is William E. Fox?

A. Yes.

Q. Where do you reside, Mr. Fox?

A. South Gate.

Q. What is your business?

A. Pharmacist.

Q. How long have you been engaged in this business? A. Fifty years.

Hearing Examiner: How long, 50 years?

The Witness: Yes.

Q. (By Mr. Tucker): Are you acquainted with

(Testimony of William E. Fox.)

Mr. John Pierce? A. Yes.

Q. Have you had any transactions with Mr. John Pierce in connection with the purchase or sale of securities? A. Yes, I have.

Q. When was the first time you became acquainted with [275] Mr. Pierce?

A. I have to give approximate dates as closely as I can. It's been three years. I think it was the latter part of 1951.

Q. How did you first become acquainted with Mr. Pierce?

A. Well, some friends of mine came through Las Vegas and noticed the race track and so forth and they came home and talked to us about it and wondered if we should all buy a little stock in it. So we did, made a trip to Las Vegas for the purpose of buying some stock and it is on that trip that I met Mr. Pierce.

Q. Where did you meet him?

A. I don't know. I think it was the Thunderbird Hotel.

Q. How did you happen to get hold of Mr. Pierce about that matter, can you explain that?

A. We inquired around regarding the management of the track, proposed track, at that time and in the course of our examination, why, Mr. Pierce's name was offered to us.

Q. Can you recall the approximate date when you saw Mr. Pierce about this?

A. I think it was November of '51.

(Testimony of William E. Fox.)

Q. Do you have any records that would refresh your recollection as to the approximate date?

A. Well, the first check which I gave to the bank for the purchase of the first batch of stock, I think it's dated November, isn't it? [276]

Q. I'm handing you a check. Is that the one you refer to? A. I think that is it, yes.

Q. Did you—

A. It's possible it was October when we were out there because this was a little time coming down.

Q. Did you talk to him more than once about this stock? A. Yes.

Q. Before you bought some?

A. I think so.

Q. Now, with reference to your talk with Mr. Pierce, you said some friends were with you. Who were those friends? A. Mr. and Mrs. Ramlos.

Q. Were they with you when you talked to Mr. Pierce? A. Yes, they were.

Q. You believe you saw him at the Thunderbird Hotel the first time?

A. I think that is where the meeting occurred, I think so.

Q. Was anybody else present when you talked to Mr. Pierce at that time?

A. It occurs to me that the first meeting was with Mr. Ramlos and he. I don't think Mrs. Ramlos was present at the first meeting, probably later on she was but—

Q. Can you recall the conversation you had with Mr. [277] Pierce at that time?

(Testimony of William E. Fox.)

A. Mr. Tucker, I wouldn't be able to do that. We were there seeking information regarding the track and I presume that was the gist of our conversation.

Q. Did you talk with him about stock of the track at that time? A. Yes.

Q. And to the best of your recollection, what was said about it at that time?

A. Well, as I remember now, I know I came away with the feeling that he would provide me with some stock.

Q. Can you recall what was said about it?

A. He told me, I think it was on this trip, he told me he thought he could get ahold of 3000 shares and I remember that he said they belonged to a lady whose husband had died and she was liquidating.

Q. Had you prior to that time said anything to him about your wanting to buy some stock, I mean before he said that to you?

A. Well, we told him, I think, anyway, we must have left the impression we were there because we were interested in the track.

Q. By being interested in the track, you mean you wanted to buy some stock in the track?

A. That's right. [278]

Q. Is that why you went to see Mr. Pierce?

A. That's right.

Q. Did you tell him that is what you wanted to talk about?

A. I don't know if we told him that. I know that was our motive in looking him up.

(Testimony of William E. Fox.)

Q. Then what was it he said about getting some stock?

A. I think he told me he thought he could get ahold of 3000 shares that belonged to a widow whose husband had passed away and she was liquidating.

Q. Was there any price discussed?

A. There must have been, Mr. Tucker, but I can't recall now.

Q. Did you see him again or talk to him again up to the time that this check is dated?

Hearing Examiner: What is the date of that check?

The Witness: The date is November 14, 1951. I think he called me on the phone probably a day or two before the check was dated. The bank was very slow getting the transaction back to Las Vegas and I think I had a telephone call from him.

Q. (By Mr. Tucker): Do you recall the substance of that telephone conversation?

A. Yes, he was in a hurry to get his money and wanted to know why it hadn't come through and so forth. [279]

Q. Between the time you talked to Mr. Piercee about getting some stock, did you have any information that he had gotten some stock for you?

A. Not until the bank called me.

Q. What bank was that?

A. Bank of America.

Q. Where?

A. It's in South Gate, Walnut Park Branch, but it's in South Gate.

(Testimony of William E. Fox.)

Q. Was that advice to the effect that there was some stock there for you?

A. Mr. Crowe was looking after it for me. I told him previously there would be some stock coming and when it did to call me or draw on my account for it. When it did come in, he called me.

Q. Did you have any arrangement with Mr. Pierce prior to that time about how the transaction was to be handled if he did get some stock for you?

A. Be sent to my bank.

Q. How many shares were sent to the bank—do you still have the certificate for that stock?

A. I think there's some there, Mr. Tucker.

Q. You have handed me a stock certificate bearing 10495. Will you refer to that and see if there's, if that is the certificate involved in that transaction? [280]

A. I think it is, I feel quite sure of it.

Q. Will you refer to the date on the certificate?

A. The date is November 6th and my check is dated November 14th so that must be the certificate.

Mr. Tucker: I don't want to introduce the certificate in evidence. I would like to read into evidence with consent of counsel the essential characteristics of the certificates so far as they are material here, this one being Certificate No. 10495 for 1100 shares of the common capital stock of Las Vegas Thoroughbred Racing Association, bearing date of November 6, 1951.

I wonder if it may be stipulated that the check referred to, so that we may leave these documents

(Testimony of William E. Fox.)

in the possession of Mr. Fox, is a check signed by William E. Fox, No. 2601, dated November 14, 1951, in the sum of \$3,000.00, payable to the Bank of America.

Mr. Sobieski: We will stipulate that you produced such a check but we don't stipulate it has any relevancy or any materiality with these proceedings or is connected up with the transactions.

Hearing Examiner: The testimony has been that Mr. Fox believes that is the check which he gave in payment of the shares which were sold a few days before and his reference has just been made. [281]

Q. (By Mr. Tucker): In your conversation with Mr. Pierce that you testified to, when he said that he would get some of the stock for you, was anything said with reference to the availability of stock of Las Vegas Thoroughbred Racing Association?

Mr. Sobieski: I object on the ground leading and suggestive, Your Honor.

Hearing Examiner: Have you exhausted this witness' memory of this meeting?

Mr. Tucker: I will withdraw the question.

Hearing Examiner: Really, I would like, if this witness has any recollection, for him to tell us a little more, if you can, as to how you happened to meet Mr. Pierce.

Now, you said you went to the Thunderbird and, to your recollection, you made inquiry. Who did you inquire of at the Thunderbird, do you recall?

Mr. Sobieski: Object to that as hearsay.

(Testimony of William E. Fox.)

Q. (By Mr. Tucker): Where did you go first on that trip? A. To the Thunderbird.

Q. Had you been to the office of the Las Vegas Racing Association?

A. Not on that trip. Mr. Ramlos had been on his trip before.

Q. The man who was with you?

A. That's right. [282]

Q. Was it Mr. Ramlos who had the information that led you to the Thunderbird?

A. That's right. Well, he had the information that some stock was available. I don't know whether I should say the stock was available or not.

Mr. Sobieski: I object to any conversation between this witness and Mr. Ramlos as hearsay, out of the presence of the respondent.

Q. (By Mr. Tucker): Did you get any direct information of your own knowledge from anyone that led you to the Thunderbird to see Mr. Pierce?

Mr. Sobieski: Object to that as hearsay.

Mr. Tucker: I am asking if he did have such information and propose to follow that up by what it was.

Mr. Sobieski: Immaterial.

Hearing Examiner: It is material if we can get it without having it in a hearsay fashion.

Mr. Sobieski: How else can you get it?

Mr. Tucker: I'm asking if he had such information and we will see whether it is hearsay or not.

The Witness: Mr. Ramlos had secured the information.

(Testimony of William E. Fox.)

Mr. Sobieski: I object to any conversation between this man and Ramlos as hearsay.

Mr. Tucker: You can't testify as to what Mr. Ramlos told [283] you.

Hearing Examiner: These are rules of evidence and you have to tell what you know yourself, not what somebody else told you.

Mr. Sobieski: This witness is under oath and is subject to all the provisions of a man testifying under oath and he is limited to testify to what he knows and we are entitled to have his testimony so limited.

Hearing Examiner. There is no showing Mr. Fox hasn't been very forthright and honest in what he has attempted to say. We want to indicate to you that there is no showing whatever you are not giving us the best information that you had at this time.

Mr. Sobieski: I don't mean to say that. What I mean to say is we are entitled to have the matter limited to what he knows.

Hearing Examiner: I know but there is no reason to be reminding this witness he is under oath. I'm sure he recognizes it. Now, getting over the legal technicalities, Mr. Tucker, you may proceed.

Q. (By Mr. Tucker): On this occasion, had you been given any information yourself, personally, by anybody connected with the Las Vegas Thoroughbred Racing Association indicating where you might meet Mr. Pierce? [284]

(Testimony of William E. Fox.)

Mr. Sobieski: I object to that on the ground of hearsay.

Mr. Tucker: I'm asking if he had such information.

Hearing Examiner: What is the answer to that?

The Witness: I had information that we'd find him at the Thunderbird Hotel.

Hearing Examiner: Find who at the Thunderbird Hotel?

The Witness: Pierce.

Hearing Examiner: Did you obtain that from anyone connected with the Thoroughbred Racing Association?

Mr. Sobieski: Object to that as immaterial.

The Witness: No.

Hearing Examiner: The answer is no.

Q. (By Mr. Tucker): Did you find Mr. Pierce at the Thunderbird Hotel and that is where the conversation you testified to took place? A. Yes.

Q. You have said that you talked with him about purchasing stock and you have said that he indicated that he thought he could get some from the named source?

Mr. Sobieski: Objected to as not an appropriate statement of the witness' testimony and being unnecessary to rehash it.

Mr. Tucker: I tried to abbreviate it.

Q. (By Mr. Tucker): To go back to it, do you recall any other things that were said at that conversation about that transaction? [285]

A. That's been three years, Mr. Tucker.

(Testimony of William E. Fox.)

Hearing Examiner: You can make any inquiry further that you want to by way of the witness' recollection.

Q. (By Mr. Tucker): Do you recall any further, anything that was said about the availability of stock?

A. Yes, it was indicated by Mr. Pierce that there wasn't, it wasn't too easy to get.

Q. When you say, "it was indicated," did somebody tell you that? A. Mr. Pierce.

Q. Can you recall whether there was any discussion as to whether or not Mr. Pierce, himself, at that time had any stock?

Mr. Sobieski: Objected to on the ground leading and suggestive.

Hearing Examiner: That may be but—

Mr. Tucker: The witness apparently having exhausted his recollection, it's proper to ask a leading question to test the exhaustion of his recollection.

Mr. Sobieski: I don't think it is proper in the case in chief.

Hearing Examiner: Under the circumstances I think you may proceed in the light of the showing that the witness' recollection is somewhat dim.

The Witness: I went away with the impression that Mr. [286] Pierce owned some stock in the Las Vegas Racing Association.

Q. (By Mr. Tucker): Can you recall anything further said about either that or his going out to get some stock for you?

A. I can't recall, Mr. Tucker.

(Testimony of William E. Fox.)

Q. Do you recall how much you wanted to buy at that time?

A. Mrs. Fox and I decided that we would probably—

Mr. Sobieski: Object as calling for a conclusion of the witness, hearsay.

Q. (By Mr. Tucker): Is there something you told Mr. Pierce about it? A. Yes.

Q. All right, what did you say to him about it?

A. We had decided we would allocate twelve to fifteen thousand dollars for stock in the Las Vegas Racing Association.

Q. Can you recall whether between the time you had that conversation and the date of this check of November 14, 1951, you had any other talks with Mr. Pierce?

A. I think the only other one was over the phone when he called to find out why the money hadn't been coming through. The bank seemed to be, rather, they were always two or three days behind in getting stuff out.

Q. When would that have been in relation to the date this check bears, November 14, 1951?

A. The date that Mr. Crowe of the bank called me, I [287] immediately went to the bank and issued a check and it was a couple days later that I imagine I had this telephone call.

Q. Did you thereafter have any further talks with Mr. Pierce about acquiring additional stock of the Las Vegas Thoroughbred Racing Association?

A. Yes.

(Testimony of William E. Fox.)

Q. When was the next time you talked to him about it, to the best of your recollection?

A. Was it July?

Q. By referring to your checks, can you refresh your recollection?

A. Yes, I can. It was February, February of '52.

Q. I also hand you Exhibit 6 already introduced in evidence. Now, Exhibit 6 bears the date February 21? A. Right.

Q. Then, prior to that time did you talk with Mr. Pierce about more stock of the Racing Association?

A. I can't recall whether I did or not unless I did it—I know, it could have been a follow up to our first conversation when I met him in Las Vegas. It could have been that I talked to him separately about this. I can't remember now.

Q. Do you recall having had any conversation with Mr. Pierce about the price of stock or what you would pay for stock if he got it for you?

Mr. Sobieski: Object on the grounds leading and suggestive. [288]

Q. (By Mr. Tucker): When was that conversation?

Mr. Sobieski: May I have a ruling?

Hearing Examiner: The objection is overruled.

Q. (By Mr. Tucker): When was that?

A. That must have been in February because the stock was not very stable in the first transactions that took place but it finally settled to \$5.00 or \$6.00

(Testimony of William E. Fox.)

a share. That was the price that was prevalent at that time.

Q. Where did you get that information?

Mr. Sobieski: Objected to as calling for a conclusion of the witness.

Mr. Tucker: I am asking where he got the information. He certainly knows where he got it if he can remember.

Hearing Examiner: Objection overruled.

The Witness: That talk on the street in Las Vegas was \$6.00 a share.

Q. (By Mr. Tucker): You talked with Mr. Pierce about price? A. Yes, that's right.

Q. Did he say anything to you about it?

A. Yes.

Mr. Sobieski: Objected to as leading.

Hearing Examiner: Overruled. [289]

Mr. Sobieski: There is no foundation, no place nor time nor anything else. Certainly we have to have a foundation.

Q. (By Mr. Tucker): When did you talk to him about that?

A. I talked to him on the first trip I met him. It was in November.

Hearing Examiner: November of what year?

The Witness: 1951.

Q. (By Mr. Tucker): I notice the first purchase was of common stock? A. That's right.

Q. Did you ever talk with him about the price of units? A. Yes.

Q. When was that?

(Testimony of William E. Fox.)

A. That was in November.

Q. What did he say to you then?

Mr. Sobieski: May I ask who was present at this next conversation?

Mr. Tucker: I think he's already testified as to the November conversation.

The Witness: Mr. Ramlos and Mr. Pierce and myself.

Mr. Sobieski: Where was that conversation?

The Witness: Thunderbird Hotel.

Mr. Sobieski: When?

The Witness: It was in November, 1951. [290]

Q. (By Mr. Tucker): Did Mr. Pierce then say anything to you about the price of units?

A. Yes.

Mr. Sobieski: Objected to on the ground leading and suggestive.

Hearing Examiner: Overruled.

Q. (By Mr. Tucker): Did he say anything about the price of the common stock at this time?

A. No, he did not, as I recall.

Q. What was then said about the price of units?

A. \$6.00.

Q. With respect to Exhibit 6 and prior to the receipt by you of Exhibit 6, did you have any conversation with Mr. Pierce about further purchase of stock in the Association at or about that time?

A. Mr. Tucker, which is Exhibit 6?

Q. The yellow one dated February 21.

A. I see. Oh, yes, I talked to him.

(Testimony of William E. Fox.)

Q. When and where did you talk to him, to the best of your recollection?

A. I think, I know I talked to him on long distance over the phone.

Q. About when was that? [291]

A. It might have been along in June.

Q. I was referring to at or about February 21.

A. You mean regarding this?

Q. Regarding that.

A. Well, I must have talked to him a few days before February 21.

Q. Can you recall specifically?

A. I can't, Mr. Tucker. That's three years.

Q. Well, when you received this letter, Exhibit 6, did that come as a surprise to you?

A. No request had been made for that stock for Mr. and Mrs. Coffey.

Q. That refers to some stock for you, also?

A. That's right. No, that was no surprise because I had left the idea, I guess, I wanted to appropriate twelve, fifteen thousand dollars as an investment in the Racing Association.

Q. In stating that to Mr. Pierce did you indicate the price that you were willing to pay?

A. Well, there was only one price.

Mr. Sobieski: Objected to as leading and suggestive.

Hearing Examiner: Overruled.

The Witness: All I ever heard, I think I bought one little lot at, a small amount at \$5.50 but the going price was \$6.00. [292]

(Testimony of William E. Fox.)

Hearing Examiner: Where did you learn the going price from?

The Witness: From the people around the Thunderbird and people on the street and people there where we stayed.

Hearing Examiner: Did Mr. Pierce say anything about the price?

The Witness: He corroborated the price.

Q. (By Mr. Tucker): Did you inform Mr. Pierce anything about your willingness to pay that price?

A. Well, he went ahead and bought the stock. I must have said yes, I must have said it was all right because the stock was purchased for me.

Q. Can you recall that prior to February 21, 1952, that that price had been discussed with Mr. Pierce? A. Yes, it had been.

Q. Was this in connection with your indication of how much you were allocating to invest?

A. That's right.

Q. Was that price related to unit or preferred shares or common shares? A. Units.

Q. Exhibit 6, the letter of February 21, refers to certificate of stock having been delivered to the bank and did you go to the bank and pick up the certificate from the bank? [293]

A. I, certificates were left in the bank. I did go over and write them a check.

Q. Can you recall whether there were certificates for both preferred and common shares?

A. In the first lot, it seems to me as I remember

(Testimony of William E. Fox.)

now, in the first lot there were no preferred shares.

Q. That was in November?

A. That's right. In the second lot, there were units of common and preferred.

Q. What did you do with units of preferred stock?

A. They were sent in and transferred, that is, exchanged for the new stock which is issued.

Q. You refer to the reorganized company, you sent those in for stock of the Jockey Club?

A. That's right.

Q. So you don't have possession of those any more? A. No.

Q. Handing you a stock certificate bearing the number 10591, can you recall whether or not that is the certificate for the common shares that went to the Bank of America in connection with the letter of February 21, 1952, and in that connection, I direct attention to the fact that there's no date on the certificate?

A. That is what makes it difficult, Mr. Tucker. I can't recall when I received this. [294]

Q. You notice the letter of February 21, 1952, refers to 400 shares of common stock?

A. Is that—it's the only 400 shares I received, isn't that it? I think so.

Q. Do you have any other certificate for 400 shares? A. I don't think so.

Q. If I may direct your attention to the fact that Exhibit 5 heretofore introduced in evidence,

(Testimony of William E. Fox.)
on the page captioned "Prepared from Journal—"

Mr. Sobieski: Object. This is not a proper question to this witness.

Mr. Tucker: I think the objection may be well taken.

Q. (By Mr. Tucker): You have no other certificates for 400 shares?

A. I don't think so, I don't recall.

Mr. Tucker: Without putting the certificate in evidence, I submit to counsel for examination.

Mr. Sobieski: I stipulate the certificate need not be put in evidence and counsel has produced a certificate as he has described.

Mr. Tucker: A certificate bearing no date bearing number 10591 for 400 shares of common capital stock of Las Vegas Thoroughbred Racing Association.

The Witness: One of those which is on the bottom—

Mr. Sobieski: I object to that as a commentary statement. [295]

Mr. Tucker: That will come up. You go right ahead and tell me.

Hearing Examiner: I notice Commission's Exhibit 6, the letter from Mr. Pierce to Mr. Fox, February 21, 1952, which is in evidence makes a reference to the issuance of certain stock to the names of Allen Coffey and Marie Coffey. Is there any testimony as to who those people are?

Q. (By Mr. Tucker): Will you explain that?

(Testimony of William E. Fox.)

A. May I have that \$500.00 check there, Mr. Tucker? Mr. and Mrs. Coffey are bosom friends of Mrs. Fox and I and they wanted to invest a little in the Racing Association and she gave me \$500.00 to buy stock when I went up there.

Hearing Examiner: Where?

The Witness: To Las Vegas. There didn't seem to be any available at the time and I held her money for a month or two and then I gave her a check. I wasn't able to get it so I gave her my check back for the money she had given for the stock. They are friends of mine who live in South Gate.

Mr. Tucker: Now, the check that we have been talking about, that the witness has been referring to, I would like to reserve it for the witness, so if counsel will stipulate, we'd like to give the main features of the check into the record as follows: The check I now refer to is not the check about the Coffey transaction but the check that he referred to in [296] connection with the letter of February 21. That check is dated February 29, 1952, No. 2743, in the sum of \$3,000.00, signed by William E. Fox, and payable to the Bank of America. That is the check we have been talking about, is it not, from Mr. Fox.

Hearing Examiner: That represents the purchase of how many shares?

Mr. Tucker: That represents the purchase of what?

The Witness: Five hundred shares.

Q. (By Mr. Tucker): Shares or units?

A. Units.

(Testimony of William E. Fox.)

Q. Now, I notice this certificate for common shares that we have been talking about was for 400 shares and did they, what became of the other 100 shares of that 400 of the 500 units?

A. Well, as I recall, Mr. Tucker, this was 500 units here, I don't know, I don't recall that I bought any preferred stock separate from the units.

Oh, here it is, here it is, it was given to Mr. and Mrs. Coffey, see. He evidently had 500 units. He must have given me 500 preferred and 400 common and Mr. and Mrs. Coffey 100 common.

Q. That accounts for the entire purchase price of \$3,000.00 evidenced by the check to which we have referred? [297] A. That's right. [298]

* * *

Q. After your purchase of shares in February, did you buy any more stock of the Las Vegas Thoroughbred Racing Association through Mr. Pierce?

A. In March.

Q. In what year? A. 1952.

Q. Do you have a check that evidences that transaction? A. That's right.

Q. What is the date of the check, to refresh your [305] recollection? A. March 28, 1952.

Q. Shortly before that time, did you have any talk with Mr. Pierce about getting additional units or stock? A. I can't recall.

Hearing Examiner: When, March of 1952?

The Witness: March of 1952.

Hearing Examiner: Tell us the circumstances

(Testimony of William E. Fox.)
surrounding that.

Mr. Tucker: For the purpose of refreshing the witness' recollection, did you go to Las Vegas in March of 1952?

The Witness: I hope this is right, we were there, the last trip on the birthday of Mrs. Ramlos. I'm inclined to believe that was in March.

Q. (By Mr. Tucker): Of 1952?

A. I think so.

Q. You do recall making the trip with Mrs. Ramlos? A. That's right.

Q. Did you talk with Mr. Pierce at that time about buying more stock? A. That's right.

Q. Can you recall as nearly as you can what that conversation was, telling us, first, where it was?

Hearing Examiner: Just your best recollection. [306]

The Witness: I think Mr. Ramlos and I got in the car and went down to Pierce's house to get the information as to whether there was any stock available.

Q. (By Mr. Tucker): Who was present when you went to his house?

A. As I recall, he and I and Mr. Ramlos.

Q. Do you recall the conversation at that time?

A. Wasn't very much. I was only there a minute.

Q. Can you recall what you said and what Mr. Pierce said?

A. We wanted to know whether or not some stock was available and he thought there would be.

Q. Then, did you talk with him any further

(Testimony of William E. Fox.)

about stock in this company between then and the date of this check on March 28, 1952?

A. As near as I can recollect, Mr. and Mrs. Ramlos and myself were invited to dinner that night by Mr. and Mrs. Pierce at the Thunderbird. I think that is the night we were entertained there. Of course, we did talk about the race track and the stock. I could be wrong on that but I think that was the time.

Q. When you and Mr. Ramlos talked to Mr. Pierce at Mr. Pierce's house at that time, can you recall whether there was any discussion at that time about price? A. The price was \$6.00.

Q. You have produced this check dated March 28, 1952. [307] Can you tell us the circumstances under which that check was issued, where it was issued?

A. That was issued in my store and the stock was delivered to me at my store. It did not go to the bank.

Hearing Examiner: Your store is in South Gate?

The Witness: South Gate.

Hearing Examiner: By whom?

The Witness: Mr. Pierce. I think this is, one of them was delivered to me and I think that is the batch.

Q. (By Mr. Tucker): You have produced here two certificates for common stock, Nos. 10611 and 10612. Are those the certificates that were delivered to you?

(Testimony of William E. Fox.)

A. That is part of it, yes, sir. I think, I'm positive in saying that that was delivered to me.

Q. These certificates were both common shares, did you also receive certificates for preferred shares? A. That's right.

Q. So that together with common shares they made units? A. That's right.

Q. And you received the same number of preferred shares as you did of the common shares?

A. As I remember, that's correct. The only common shares which came separate was the first lot which were sent to me from Las Vegas and the ones which came to Mr. and Mrs. Coffey. [308]

Mr. Tucker: With consent of counsel, I may read this into the record so that Mr. Fox may keep it.

The check referred to is No. 2606 on the Bank of America, March 28, 1952, payable to John Pierce's order in the sum of \$1,460.00, signed by William E. Fox, endorsed by John Pierce, for identification, a Fred A. Smith by endorsement guaranteed.

Q. By Mr. Tucker): Is the check evidencing that transaction?

A. That seems to be it, yes.

Q. Now, this evidences 400 shares of the common stock and ten shares of the common stock?

A. As I recall, I had some money in my pocket and I gave him some cash and the check was to make up the balance, \$1,460.00.

Q. So the additional price was paid by—

(Testimony of William E. Fox.)

A. Cash.

Q. Instead of check?

A. That's right. I think that it was on one occasion. I'm quite sure that was the occasion.

Q. Did you subsequently buy some other stock of the Las Vegas Thoroughbred Racing Association from or through Mr. Pierce?

A. What was the date of that one, March?

Q. This was in March.

A. Seems to me there was one other transaction.

Hearing Examiner: We have March, '52, now? [309]

The Witness: That's right.

Q. (By Mr. Tucker): You have produced here a stock certificate and a check, do those aid you in refreshing your recollection?

A. That was, I bought some in July. The check is dated July 15, amount of \$2,050.00. That seems to be the next transaction.

Q. In connection with the—this July, '52, can you recall how many shares were bought and the price of the shares at that time?

A. No, I couldn't, Mr. Tucker. No, I couldn't.

Q. By the way, where was that stock delivered?

A. Mr. Tucker, I can't recall. I think one of those batches was delivered to my store.

Q. In addition to the March transaction to which you have testified?

A. I'm not sure which one it was, whether it was March or this one but one of those batches was delivered to me at my store.

(Testimony of William E. Fox.)

Q. Can you recall whether you purchased any stock or received delivery of any stock subsequent to July of 1952?

A. Yes. Yes, dated October 11, 1952.

Q. Can you recall when you received that certificate or how you received that certificate?

A. No, I can't. I don't have a check covering that [310] amount of stock. I might be able to find it. I don't have a check that corresponds to that amount of stock.

Q. Did you receive preferred stock matching this certificate? A. I'm sure I did.

Q. And that you turned in, did you, on the exchange? A. That's right.

Mr. Tucker: The certificate that the witness has produced here to which reference has just been made, in lieu of being introduced in evidence, is described as Certificate No. 10696, transferred October 11, 1952, made out in the name of William E. Fox and Sexon Rosson Fox for 1540 shares of the common capital stock of Las Vegas Thoroughbred Racing Association.

Q. (By Mr. Tucker): Referring to this certificate bearing the October date to which you have testified, can you recall what the price was for the units? A. \$6.00. [311]

* * *

Q. Before recess, Mr. Fox, you testified that you have an obligation owed you by Mr. Pierce and that

(Testimony of William E. Fox.)

you have been handling that, together with another obligation owed to some other people?

A. Right.

Q. Did you identify the other people as Mr. and Mrs. Ramlos? A. Right.

Q. Can you tell us how much was due on the obligation to you as of October 25th last past?

Mr. Sobieski: Your Honor, I object on the ground there is no showing there was such an obligation.

Hearing Examiner: There should be a showing there was and the questions and answers have only been obtained for the record which are germane or material to the new issues, apparently, which the amendment to the order anticipates and [328] can only remain in the record if the amendment is authorized by the Commission.

The Witness: I think the record will show that I testified that was \$1375.00. I verified it as \$1325.00.

Mr. Sobieski: I move the answer be stricken, Your Honor. I thought I made an objection that there was no showing originally what the obligations were and I think the conclusion shouldn't follow unless there was an obligation and what it was.

Hearing Examiner: You can bring that out on cross-examination but, at the same time, I think the basis of the obligation has been shown now to establish that there is an obligation.

Q. (By Mr. Tucker): Does Mr. Pierce owe you any money? A. Yes.

Q. How long has he owed it to you?

(Testimony of William E. Fox.)

A. About two years.

Q. What was that money for?

A. Part of it was for \$325.00 for stock that I paid him for that he didn't deliver and part of it was a loan.

Q. Did you have any conversation with Mr. Pierce about the stock that he didn't deliver?

A. Yes.

Q. What was the conversation and who was present when you talked with him? [329]

A. I just think he and I at the time. He promised to send the stock and take care of them.

Q. When was that conversation as best you can recall?

A. I will have to look at those dates there. That was in March, 1952.

Q. Are you sure of that, Mr. Fox, will you look at your material there?

A. Either March or July, either March or July.

Q. What was the conversation you had with Mr. Pierce at that time whether it was March or whether it was July?

A. Well, the matter was brought up, I had given him more money than what the stock was worth when it was delivered.

Q. Did you call that to his attention?

A. Yes.

Q. What did he say?

A. He said he would send it to me.

Q. Send you what? A. Stock.

Q. Did you receive it? A. No.

(Testimony of William E. Fox.)

Q. Did you talk with him subsequently?

A. Yes.

Q. What did he say about it?

A. As soon as he could.

Q. When was that? [330]

A. Several times as brought out by the letters there.

Q. That relates to a matter of fact. What does that have to do with \$325.00 you mentioned a few minutes ago?

A. That \$325.00, that is what I overpaid him for stock, as I remember it.

Q. Did you talk to him about getting back the overpayment?

A. No, he was to send it to me in stock.

Hearing Examiner: Well, now, is the record clear on the overpayment? For what stock?

The Witness: On the stock which was purchased either July or March of 1952.

Hearing Examiner: Is that the Racing Association stock?

The Witness: Racing Association stock.

Mr. Sobieski: I would like to inquire what paragraph of the hearing order this subject is directed to.

Mr. Tucker: Right now I am trying to go back to the method of incurring this obligation. The witness said Pierce owed him some money and that was part of it. Now, I'm trying to find out how the money gets into this arrangement that he just now said had something to do with stock.

(Testimony of William E. Fox.)

Mr. Sobieski: Is this directed to Subparagraph E?

Mr. Tucker: It's directed to Subparagraph E in part and directed to the proposed new amendment in part.

Mr. Sobieski: Subparagraph E is the latest amendment. [331] Is it now contended that the \$375.00 that is referred to in Subparagraph E is a variance and what you mean is \$325.00?

Mr. Tucker: The witness had said that the figure \$375.00 was erroneous and \$325.00 is the amount, as I understand.

Mr. Sobieski: Then is it your contention that the, then, do you admit that the order for hearing in stating \$375.00 is erroneous?

Mr. Tucker: All I can go by is what the witness testifies to and if there is a variation from the version in the order, then, it will speak for itself.

Mr. Sobieski: That is what I wanted to find out about. .

Q. (By Mr. Tucker): A moment ago you said that Mr. Pierce owed you an indebtedness of \$325.00, is that right? A. Right.

Q. And I asked you what it represented and you said it represented some money loaned and some money that you had coming back from over-payment on stock?

Mr. Sobieski: Objected to. I think the question is complex and compound and covers grounds already asked and answered.

Mr. Tucker: I'm bringing the matter to the at-

(Testimony of William E. Fox.)

tention of the witness in order to see if we can get an explanation of the transaction.

Mr. Sobieski: I suggest the witness and not counsel [332] testify.

Hearing Examiner: You can summarize it if you want to.

Q. (By Mr. Tucker): At the present time does Mr. Pierce owe you the stock or does he owe you the money? A. He owes me the money.

Q. Then, at what point did you reach any conclusion with Mr. Pierce about him owing you money instead of stock?

A. I think that was in April of this year. The letter there will definitely state, I think, it was April 31 or April 30.

Q. What was your discussion, what did you say and what did Mr. Pierce say at the time of that conversation? A. He agreed.

Mr. Sobieski: May I object on the ground there is no foundation laid as to the conversation and I think I shouldn't have to make such objections.

Q. (By Mr. Tucker): Who was there?

A. It was done by long distance and by letter, Mr. Tucker.

Q. Did you have a long distance telephone conversation about it? A. Yes.

Q. Who did you talk to?

A. Mr. Pierce and Mrs. Pierce, too. [333]

Q. When was that, as near as you can recall?

A. Well, it was probably April of this year.

(Testimony of William E. Fox.)

Q. Can you tell us what was said in that conversation?

A. Well, they agreed to send me the \$325.00 and \$100.00 a month on the balance.

Q. At that time did he owe you any other money in addition to the \$325.00?

Mr. Sobieski: Objected to as calling for a conclusion of the witness, leading and suggestive.

Hearing Examiner: I think he can answer whether he owes any additional money.

Q. (By Mr. Tucker): The question was addressed to the time of that conversation.

A. At that time it was \$1325.00 and \$325.00 was their arrangement and I accepted it for payment on the debt plus \$100.00 a month after that.

Q. On the balance? A. Right.

Q. And that made the balance then how much at that time? A. \$1000.00.

Q. So that as of April last past the net amount owed to you was \$1000.00? A. Right.

Q. How much has been paid on that since that date? [334] A. \$250.00.

Q. When was the last payment made?

A. August, I guess it was July.

Q. So that as of October 26 last past, how much did he owe you then?

A. \$1000.00 less \$250.00 which would be \$750.00.

Q. Were you handling this Ramlos account with Mr. Pierce in April? A. Yes.

Q. What was the amount of that?

(Testimony of William E. Fox.)

Hearing Examiner: What do you mean by "were you handling" it?

Q. (By Mr. Tucker): Well, what was the arrangement on that?

A. The arrangement was a check of \$100.00 would come.

Q. No, I mean—all right, I will go back.

Did you discuss with Mr. Pierce an obligation that he owed to Mr. and Mrs. M. C. Ramlos?

A. Yes.

Q. When did you discuss it with him first?

A. At the same time, in March that the matter was taken up regarding what he owed me.

Q. What was that conversation, was that on this telephone conversation?

A. That's right. [335]

Q. What did you say and what did he say about that?

A. I reminded him of the indebtedness and he said, yes, he realized it and, also, said he realized he owed Mr. and Mrs. Ramlos.

Q. How much?

A. I can give you a rough estimate on it, \$635.00.

Mr. Sobieski: I move the rough estimate be stricken since Mr. Ramlos is going to be the next witness. I don't see any reason for this man to guess in circumstances like that.

Hearing Examiner: When you say "a rough estimate," what is the basis, did you figure it yourself or did Mr. Pierce tell you, which?

(Testimony of William E. Fox.)

The Witness: They handled, she drew up a note and it's between \$600.00 and \$700.00.

Hearing Examiner: Who do you mean, "she"?

The Witness: Mrs. Ramlos.

Hearing Examiner: You didn't talk to Mr. Pierce about this, did you? Did you talk about the amount owed?

The Witness: I don't think so, about the total amount, no.

Mr. Sobieski: Will my motion to strike be granted, Your Honor?

Hearing Examiner: Yes, certainly, a rough estimate is a conclusion on Mr. Fox's part.

Q. (By Mr. Tucker): How far the estimate is off one way or the other—

Mr. Sobieski: I object to the question asking him to [336] estimate particularly since this witness is going to be on later on and we are wasting time and encumbering the record going into it in this round about way.

Hearing Examiner: Any conversation, Mr. Fox, which you and Mr. Pierce had, tell us about that.

The Witness: He told me he owed them between \$600.00 and \$700.00.

Hearing Examiner: Did he say that?

The Witness: Yes.

Mr. Sobieski: Object to that.

Hearing Examiner: I just never know what the answers are going to be. Any conclusions will go out but any statement of fact, as such, stays in.

Mr. Tucker: This is a statement by the defendant.

(Testimony of William E. Fox.)

Hearing Examiner: He just said that. It's in so far as the record is concerned. When Mr. Pierce makes a statement to Mr. Fox, that certainly can stay in the record.

Mr. Sobieski: I object to that as hearsay, improper—

Hearing Examiner: That objection has no basis, in fact, that I can see.

Mr. Fox, lawyers are entitled to object and it's their duty, as a matter of fact, to represent the clients, but, to laymen it very often is confusing so you just bear with us while we resolve the legal technicalities. [337]

Q. (By Mr. Tucker): In this conversation at that time in which this indebtedness from Mr. Pierce to the Ramlos was mentioned, what else was said about it?

A. He promised to send the money right away which he did.

Q. What money?

A. The \$100.00 per month.

Q. All right, now, what was said about the arrangement?

A. \$50.00 of that was to go to me and \$50.00 to her each month.

Q. Did Mr. Pierce then tell you that he would pay \$50.00 a month on the Ramlos account and \$50.00 a month on the Fox account to you?

A. That's right, until it was all cleared up.

Q. Now, you have testified that he made certain

(Testimony of William E. Fox.)

payments to you, five of them. Did he make any payments to you on the Ramlos' account?

A. Well, the amount came in one check, Mr. Tucker.

Q. Each month?

A. I cashed the check and gave Mrs. Ramlos \$50.00.

Q. How much a month of, what was the whole check for each month? A. \$100.00.

Q. So that you were sent monthly checks of how much each? A. \$50.00 each.

Q. Following that arrangement? [338]

A. That's right.

Q. How many checks of \$100.00 apiece did you receive under that arrangement? A. Five.

Q. Was it from those checks you got your \$250.00 you testified to? A. Right.

Q. And then the balance out of those checks being \$250.00 went to whom? A. Mrs. Ramlos.

Q. Have any payments been made to you on account of either your own obligation or the obligation of the Ramlos' owed by Mr. Pierce since the last payment you have testified to?

A. No. He called me up in September.

Hearing Examiner: Who is this, now?

The Witness: Mr. Pierce called me in September and told me he hadn't sent me any money and I told him, reminded him. He said this wouldn't happen again, he said he would send some right away and take care of the past month. Never got it. [339]

(Testimony of William E. Fox.)

Cross-Examination

By Mr. Sobieski:

Q. Mr. Fox, do you recall testifying earlier today that [361] in April of 1954 you made an arrangement with Mr. Pierce whereby he would pay \$325.00 then and \$100.00 a month on the balance?

A. Pay \$100.00 a month then until he had paid me.

Q. Do you recall having testified that?

A. I gave that with qualifications, sir, as best I could remember, do you recall? Those things, it's very difficult, sir. It turns out here that that \$325.00 was paid in August, and I had been hounding him for the rest of it—yes, August 22, and finally, on March 31, March 23, the effect was reached whereby he would send me \$100.00 a month, that is, \$50.00 for me and \$50.00 for Mrs. Ramlos. [362]

* * *

Redirect Examination

By Mr. Tucker:

Q. Is any money owing to you or to Ramlos secured by mortgage on Pierce's house or their automobile? A. No.

Hearing Examiner: Or anything else?

The Witness: The only thing, have two checks totaling a [395] thousand dollars and Mrs. Ramlos will tell you what she has.

(Testimony of William E. Fox.)

Hearing Examiner: When did you run those checks through the bank?

The Witness: A couple years ago.

Hearing Examiner: You deposited the checks to your account and what happened?

The Witness: Came back.

Hearing Examiner: From where?

The Witness: Las Vegas marked no funds.

Q. (By Mr. Tucker): Did you receive some assignment, an assignment of some kind of lease or patent application or something of that sort on land from Mr. Pierce? A. Yes, I did.

Q. You have that here?

A. Yes, but it is not collateral, can't be offered as collateral. It so states right on the lease.

Q. Will you get it out and tell us what you have reference to?

Hearing Examiner: In other words, I think we have reached the time, now, where we want to find out whether this is in full satisfaction of the debt.

The Witness: This is a government form, homestead form.

Q. (By Mr. Tucker): And will you read from the part of it which says that [396] it can't be used for collateral?

Hearing Examiner: You are really asking him a sort of legal question now.

The Witness: It's printed right here.

Mr. Sobieski: We have here a man who is familiar with Nevada law. If there's a legal question, he can testify to that.

(Testimony of William E. Fox.)

Hearing Examiner: I think it's a legal question.

Mr. Sobieski: I object to the question on the grounds it calls for a legal conclusion of a witness who is not qualified.

Mr. Tucker: The document referred to by the witness which purports to be a Department of the Interior, Bureau of Land Management Form 4776, Lease Under Small Tract 5869, in which the Bureau of Land Management leases to Mr. John Pierce certain described lands to be used for homesite and it is dated December 11, 1950, purporting to be signed by the United States of America, title and so forth, and John Pierce as lessee.

Is that the document to which you refer?

Hearing Examiner: Did that come into your possession?

The Witness: He sent it to me.

Hearing Examiner: Did you ask him to send it to you?

The Witness: No, I did not. I asked him to give me something that would guarantee payment of the bill.

Hearing Examiner: When was it sent to you?

The Witness: A couple years ago.

Hearing Examiner: Now, you see, Mr. Tucker, I don't know, [397] I mean, if there is an outstanding obligation or not, I don't know.

Q. (By Mr. Tucker): Was that sent in payment of the obligation or security of the obligation?

(Testimony of William E. Fox.)

A. Offered as security for the obligation but this is not, cannot be offered as collateral.

Mr. Sobieski: Object to the last statement as a conclusion of the witness and voluntary and not responsive to the question.

Hearing Examiner: If he knows it can't be offered as collateral—

Mr. Tucker: The witness explained to me why he thinks so.

Hearing Examiner: Really, whether this is collateral or can be used as collateral or was accepted in lieu of the debt, I don't know, you see. You raised a question here.

Mr. Tucker: I asked a direct question whether it was given in payment or as collateral and the answer was given as security.

Hearing Examiner: You are asking the questions. Ask him the question if this was to satisfy the debt.

Q. (By Mr. Tucker): Was this given to you to satisfy and pay off that debt? A. No.

Q. What was it given for?

A. As collateral to guarantee payment of the debt. [398]

Hearing Examiner: In that respect, well, is this the thousand dollars which Mr. Fox speaks of here, the item of deficiency in the application for registration?

Mr. Tucker: Right.

Hearing Examiner: Have you got one or haven't you? Is it deficient or not?

(Testimony of William E. Fox.)

Mr. Tucker: I'm getting to that. I have been giving the testimony. Yes, it is. I have the file right here, File 83811.

Hearing Examiner: Actually, is there any thousand dollar deficiency, actually any item misrepresented?

Mr. Tucker: I intend to introduce this into the record. I haven't gotten to that point yet.

Hearing Examiner: What?

Mr. Tucker: A copy of File 83811, the application filed in this proceeding.

Hearing Examiner: You don't have to produce it in the record. It can be made part of the proceedings by reference but, again, if that provides, or if his answer given in the application for registration says he has no debts, now, in effect, is that a debt, I don't know.

Mr. Tucker: Mr. Fox testified Mr. Pierce owes—

Hearing Examiner: We have high regard for what Mr. Fox says but he is not a lawyer and he says the debt, is in effect, not satisfied, but whether it's been satisfied is a legal question. [399]

Mr. Tucker: It seems to me that is a matter of defense. He testified and stated there's a debt owing to him.

Hearing Examiner: Mr. Fox says that and accepted an assignment of a lease in payment of the debt; well, that is a different question.

Mr. Tucker: He testified he has not.

Hearing Examiner: Was there any letter ac-

(Testimony of William E. Fox.)

companying this lease to which we have been referring from Mr. Pierce to you?

The Witness: May I read this letter?

Hearing Examiner: Let me look at it. Is this letter in evidence?

Mr. Tucker: No.

Hearing Examiner: I don't think I have any business seeing it. As a matter of fact, until we get to the point of what's what, I'm not approving or disapproving this as the case may be. I'm just trying to clear up some uncertainties.

Q. (By Mr. Tucker): When did he send you this lease? A. A couple years ago.

Q. How long ago? A. A couple years ago.

Q. You referred to a certain letter. Was that letter written to you or was that letter written to your attorney? A. To my attorney.

Q. Was it written before or after that lease came into [400] your possession? A. Written after.

Q. How long after?

A. Mr. Tucker, that is a hard question. Quite some time.

Hearing Examiner: Did you accept the lease which was sent you in lieu of payment?

The Witness: No, I didn't.

Hearing Examiner: Did you write Mr. Pierce a letter or see him and tell him that you didn't?

The Witness: I have told him that it cannot be offered as collateral.

Hearing Examiner: Have you tried to collect that thousand ever since that?

(Testimony of William E. Fox.)

The Witness: Many times.

Hearing Examiner: The thousand dollars represented by the checks of \$700.00 and \$300.00, is that it?

The Witness: That's right.

Hearing Examiner: Did you redeposit those checks in the bank since then?

The Witness: No.

Mr. Tucker: May I refresh your recollection to the fact that he did testify that he has received payments totaling \$250.00 this year on the obligation?

Hearing Examiner: Is that true?

The Witness: That is true. [401]

Hearing Examiner: I had overlooked that.

The Witness: But those payments seemed to have stopped.

Q. (By Mr. Tucker): How much does he owe you now? A. \$750.00 plus interest.

Q. You have produced a letter dated November 10, 1953, addressed to one Charles S. Buck, Attorney at Law, purportedly signed by John Pierce?

A. Yes.

Mr. Tucker: I have just showed it to counsel and Mr. Pierce and they examined the letter sent by Mr. Pierce. Is that acknowledged?

Mr. Sobieski: Well, it's Mr. Pierce's signature but I don't think this witness has got any business testifying to it.

Mr. Tucker: I will ask this letter be marked Exhibit CX-29.

(Testimony of William E. Fox.)

(The document referred to was marked Commission's Exhibit No. CX-29 for identification.)

Q. (By Mr. Tucker): This letter purporting to be a letter dated November 10, 1953, bearing what counsel states is the signature of John Pierce, how did you come into possession of this letter?

A. My attorney turned it over to me.

Hearing Examiner: To whom is it addressed?

Mr. Tucker: It is addressed to his attorney by Mr. Pierce. The signature on the letter has been acknowledged and I [402] offer it in evidence.

Mr. Sobieski: I object; incompetent, irrelevant and immaterial.

Mr. Tucker: The question having come up about whether or not this lease is security is referred to in this letter specifically.

Hearing Examiner: I think it may be received. I'm not sure that is conclusive one way or the other. It may be received for what it's worth.

(The document heretofore marked for identification as Commission's Exhibit No. CX-29 was received in evidence.)

Mr. Tucker: It was brought up in view of the doubt you expressed about the matter.

No further questions.

Mr. Sobieski: Is that offered for any other purpose?

Mr. Tucker: While that is the immediate pur-

(Testimony of William E. Fox.)

pose, I don't wish to be confined to that purpose. I'm putting it in evidence.

Hearing Examiner: It's in evidence for any purpose.

Mr. Tucker: We will use it for any purpose for which I may want to use it.

Mr. Sobieski: After you received this lease a couple of years ago, you never returned it to Mr. Pierce, did you, Mr. Fox?

The Witness: No.

Mr. Sobieski: No further questions. [403]

* * *

FERN W. RAMLOS

was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tucker:

- Q. Your name is Fern C. Ramlos?
- A. Fern W. Ramlos.
- Q. And you are the wife of M. C. Ramlos?
- A. Yes.
- Q. Where do you live? A. Norwalk.
- Q. N-o-r-w-a-l-k? A. Right.
- Q. And you are married? A. Yes.
- Q. And your husband is M. C. Ramlos?
- A. Yes.
- Q. Where is he at present?
- A. Sacramento or Gridley.

(Testimony of Fern W. Ramlos.)

Q. In what business is your husband [444] engaged?

A. He is in the rental of construction equipment.

Q. What kind of construction equipment?

A. Tractors and bulldozers.

Q. How long has he been engaged in that business? A. About five years.

Q. And he was so engaged in 1951? A. Yes.

Q. And in 1952? A. Yes.

Q. Are you also engaged in business?

A. Yes.

Q. What kind of business are you engaged in?

A. I have a beauty salon.

Q. Where is that? A. In South Gate.

Q. Are you acquainted with Mr. John Pierce, the respondent here? A. I am.

Q. Have you and your husband had some security transaction with Mr. John Pierce? A. Yes.

Q. When did you first meet Mr. Pierce?

A. In November, I guess it would be, 1951.

Q. Where did you meet him?

A. In Las Vegas. [445]

Q. Just generally what was the occasion on which you met him?

A. My husband and I were down there on a week-end trip and he went over to the office of the race track and he met him over there.

Q. That was your husband? A. Yes.

Q. Did you go along on that trip? A. Yes.

Q. Did you go with your husband to the office?

A. No, I went back to the Thunderbird.

(Testimony of Fern W. Ramlos.)

Q. However, during that trip, did you meet Mr. Pierce? A. I just met him.

Q. When after that was the next time you saw Mr. Pierce? A. The following March.

Q. About what time in March was it?

A. Around the 20th of March because I remember we were there for my birthday.

Q. On what date is your birthday?

A. The 20th.

Q. Did you see Mr. Pierce on that trip?

A. Yes.

Q. Were you present at any time on that trip when the purchase of any securities was discussed with Mr. Pierce? [446] A. Yes.

Q. Can you recall when that was on that trip, at what stage of the trip?

A. Well, I think it was practically the whole three days of the time they were talking about stock. And my husband and Mr. Fox were asking about the stock and decided to buy some more. All the time we were there that was the topic of our conversation.

Q. How long were you there at that time?

A. Four days as I recall.

Q. Did you see Mr. Pierce just once or off and on? A. We saw him every day.

Q. Were you present at these conversations when your husband talked to Mr. Pierce about buying stock? A. Probably part of the time.

Q. Now as near as you can recall, will you tell us what was said by either you or your husband to

(Testimony of Fern W. Ramlos.)

Mr. Pierce in your presence, or by Mr. Pierce, to either of you about this stock?

A. Well, I would not now know exactly what was said. They were interested in buying stock and my husband wanted the combination stock. I think they called it "common unit stock."

But anything specific, I do not recall exactly what was said, other than talking about they thought it would be a good thing and that sort of thing. [447]

Q. Were you present when your husband told Mr. Pierce that he wanted to get some of these units? A. Yes.

Q. Was that on that trip? A. Yes.

Q. Now we have been referring to stock and to units. I don't think we have mentioned the name of the company. What was the name of the company?

A. I think it was Las Vegas Jockey Association or Las Vegas Race Track.

Q. Was it Las Vegas Thoroughbred Racing association? A. That is the one, that is right.

Q. Do you recall whether prior to that time your husband had telephoned Mr. Pierce about stock of the company?

A. Yes, he had, just a few days after we came back. The previous November before that they had telephoned and he and Mr. Fox—

Q. Were you present when they telephoned?

A. I was in the house.

Q. Did you hear the conversation?

A. No, not all of it. All I know was that they ordered, I think it was 1,100 shares.

(Testimony of Fern W. Ramlos.)

Hearing Examiner: Who do you mean when you say "they"?

The Witness: My husband and Mr. Fox. [448]

Q. (By Mr. Tucker): Do you recall whether between that time and the time in March when you went to Las Vegas, there was any other telephone conversation between your husband and Mr. Pierce of which you have any knowledge?

A. No, not to my knowledge.

Q. At the time that you have testified to, the conversation with Mr. Pierce, about an indication that your husband wanted to get some of this stock or at any time during that trip to Las Vegas, was anything said by Mr. Pierce about the availability of stock?

A. By that do you mean was it hard to get or would he be able to obtain stock for us?

Q. That is right. Can you recall what, if anything, was said about that?

Mr. Sobieski: May I inquire as to which visit you are asking about now?

Mr. Tucker: March.

Hearing Examiner: March of which year though?

Mr. Tucker: 1952.

The Witness: No, I do not remember anything about him saying he was unable to get it. Well, he said he could get us some, and I guess he went ahead and it was bought at the time.

Q. (By Mr. Tucker): On that trip, did you make a purchase of stock?

A. You are speaking of March now? [449]

(Testimony of Fern W. Ramlos.)

Q. You and Mr. Ramlos on the March trip.

A. Yes.

Q. And you have produced here a check dated March 22, 1952? A. Yes.

Q. Is that the check that was given?

A. Yes.

Q. At that time? A. Yes.

Q. For that purpose?

A. Yes, for 500 shares.

Hearing Examiner: How many shares did you purchase, Mrs. Ramlos?

The Witness: All of the shares you mean?

Q. (By Mr. Tucker): There was a subsequent purchase? A. There have been two purchases.

Hearing Examiner: Well, I mean does this represent the first purchase?

The Witness: Yes, of 500 shares.

Hearing Examiner: 500 shares?

The Witness: Yes.

Hearing Examiner: You gave a check in payment of that for how much?

The Witness: \$3,000.00. [450]

Hearing Examiner: This is March 22, 1952?

The Witness: Yes.

Q. (By Mr. Tucker): This is the check referred to? A. Yes.

Mr. Tucker: The check referred to has been marked Commission's Exhibit No. CX-32.

(Commission's Exhibit No. CX-32 was marked for identification.)

(Testimony of Fern W. Ramlos.)

Mr. Tucker: I ask that it be admitted subject to substituting a photostatic copy, so that the original can be returned to her.

Hearing Examiner: Do you want these old checks, Mrs. Ramlos?

The Witness: Well, he likes to keep them.

Hearing Examiner: She has already testified to it. I don't think it is necessary to have the check into evidence.

Mr. Tucker: The check is No. 223 dated March 22, 1952, on a branch of the Bank of America on Santa Ana Street. It is payable to the order of John Pierce in the sum of \$3,000.00 signed M. C. Ramlos and written above the signature of Mr. Pierce on the reverse side of the check is the following legend: "Payment in full for 500 units '500 com. 500 pref.' in Las Vegas Thoroughbred Racing Association."

(Commission's Exhibit No. CX-32 was received in evidence.) [451]

Q. (By Mr. Tucker): You also have produced here, Mrs. Ramlos, a certificate No. 10608 for 500 shares of the common capital stock of Las Vegas Thoroughbred Racing Association issued in the name of M. C. and/or Fern W. Ramlos, stating down at the lower left-hand corner, dated March 20, 1952, transferred March 25, 1952.

Is that the certificate for the common shares that you purchased at that time? A. That is right.

Q. And what became of the preferred shares in the units that accompanied those common shares?

(Testimony of Fern W. Ramlos.)

A. They were sent in when the other people took over the track. We sent these in to be changed and we got that new certificate you have.

Q. After the track was reorganized, you sent them in for the stock of the reorganized company?

A. Yes.

Q. Is that your understanding? A. Yes.

Q. When were these certificates, reflecting these 500 shares of common and 500 shares of preferred stock, delivered to you and Mr. Ramlos?

A. Well, within a week after they were purchased they were delivered to Mr. Fox. Mr. Ramlos and I were out of town [452] at the time and they were left with Mr. Fox.

Q. Where was Mr. Fox?

A. At his drug store.

Q. In South Gate, California? A. Yes.

Q. So that is how they came into your possession? A. Yes.

Q. And was that check for \$3,000.00 that has been referred to as Commission's Exhibit No. CX-32 delivered on or about the date it bears?

A. Yes, I think so.

Q. And where was that check turned over?

A. To Mr. Pierce in Las Vegas while we were there. [453]

* * *

Q. Is Mr. Pierce indebted to you and Mr. Ramlos at the present time? A. Yes.

Q. And was he indebted to you and Mr. Ramlos on October 26, last past, of this year? A. Yes.

(Testimony of Fern W. Ramlos.)

Q. And at that time how much did he owe [458] you?

A. You would mean October of last year?

Q. Just last month.

A. Oh, just last month.

Q. Yes.

A. Let us see. Well, it would be \$250.00 less \$627.00 if you can figure that out.

Q. You mean \$627.00 less \$250.00?

A. Yes, that is right.

Q. And how long had that been owing?

A. A little over a year.

Q. Are you familiar with the circumstances under which that obligation was incurred; how it came to be owing? A. Yes.

Q. Did you discuss it with Mr. Pierce; were you present when it was talked about with Mr. Pierce?

A. Yes, part of the time.

Q. When was the last payment you received on account of that indebtedness, as best as you can recall? A. Two months ago I think.

Q. And that is an indebtedness that is being handled for you by Mr. Fox, as far as collection is concerned?

A. Well, Mr. Pierce had sent it to Mr. Fox, but Mr. Fox isn't actually handling it for me. He sent it to Mr. Fox. In other words, he was sending \$100.00 and told Mr. Fox to give me \$50.00 and for him to keep \$50.00. [459]

Q. Now is that indebtedness secured by any

(Testimony of Fern W. Ramlos.)

mortgage on either Mr. Pierce's house or on his automobile? A. No.

Hearing Examiner: Is the record clear as to what this indebtedness consists of?

Q. (By Mr. Tucker): How was that obligation incurred? What does it represent, Mrs. Ramlos?

Mr. Sobieski: I think the question is immaterial. We have not objected to the fact that the indebtedness exists.

Hearing Examiner: Well, that is a conclusion and if the conclusion is adequate, I will not press the point.

Mr. Tucker: I have no objection of going into the question with the witness.

Hearing Examiner: Well, if it is a matter of any embarrassment, if it is conceded we will drop it.

The Witness: It is a personal matter.

Q. (By Mr. Tucker): After the indebtedness was incurred, did you talk to Mr. Pierce about it?

A. Yes.

Q. And was there any discussion of how it was to be paid?

A. Yes, he was going to pay \$100.00 a month, \$50.00 to me and \$50.00 to Mr. Fox, so it would be \$50.00 a month to [460] me.

Q. Were you present when that was discussed with Mr. Pierce?

A. Well, it was over the telephone. He told me that he would send at least that and as soon as possible would take care of all of it.

Q. And about when was that conversation?

(Testimony of Fern W. Ramlos.)

Mr. Sobieski: I object to that question on the ground that it is immaterial.

The Witness: I could not say exactly the date on it. We have talked about it a number of times.

Q. (By Mr. Tucker): Prior to that time, had you been making efforts to enforce collections from Mr. Pierce? A. Never to enforce.

Q. Well, to obtain?

Mr. Sobieski: Objected to on the ground that it is immaterial.

Q. (By Mr. Tucker): When was the obligation incurred initially?

Mr. Sobieski: I think the question is immaterial, irrelevant and incompetent.

Hearing Examiner: Well, is the record clear on one thing that there is an indebtedness?

The Witness: Yes. [461]

* * *

CHARLES L. MARGERUM, JR.
was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tucker:

Q. Will you state your full name, please?

A. Charles L. Margerum, Jr.

Q. How do you spell "Margerum"?

A. M-a-r-g-e-r-u-m.

Q. And what is your occupation? [463]

(Testimony of Charles L. Margerum, Jr.)

A. I am a security investigator with the Los Angeles office of the United States Securities and Exchange Commission.

Q. How long have you been employed by the Securities and Exchange Commission?

A. Since December 1, 1947, about seven [464] years.

* * *

Cross-Examination

By Mr. Sobieski:

Q. Now, do you know whether the—as I understand it—are these bids collected from dealers that are considered reputable?

A. I would so agree, sir. I would say "yes."

Q. Is the fact that one dealer was quoting one price and another dealer is quoting another price on that day, do you think that that indicates that either of these dealers [468] was acting improperly?

A. Not at all.

Q. How does it happen that one dealer was quoting one price and another dealer was quoting another price on the same day?

A. Well, I would say that the dealer that is quoting one price is willing to pay that much for the stock and the other dealer, who is quoting a slightly higher price, is willing to pay the higher price.

Q. Is there any standard by which we can judge whether it is a proper or an improper practice for one dealer being willing to pay one price and another dealer being prepared to pay another price?

(Testimony of Charles L. Margerum, Jr.)

Mr. Tucker: I object to the question. It is argumentative and it calls for a good deal of philosophy and speculation in its answer.

Hearing Examiner: Well, Mr. Margerum represents himself to be a specialist in this field and I see what Mr. Sobieski is driving at. And I think in this cross-examination that any line of inquiry which would have a tendency to challenge the accuracy of these quotations is permissible.

The National Daily Quotation sheets are not positive proof as such, that that is the market price on that day. It merely has a tendency to indicate the range.

Will you read the question, Miss Reporter? [469]

(Question read.)

The Witness: Do you want me to answer the question?

Q. (By Mr. Sobieski): Yes, please.

A. I do not know of any standard, Mr. Sobieski, that would make it proper or improper for one dealer to quote a certain price. I can say this, sir, if I may continue that briefly, that my interpretation of the National Daily Quotation sheets is that they are the measure through which the dealer works.

Q. As I understand it, the National Daily Quotation sheets for each day tell what the quotations were for the preceding day; is that your understanding?

A. These prices are the prices quoted for the day on which the sheet is dated.

(Testimony of Charles L. Margerum, Jr.)

Q. And is it your understanding that the sheet is delivered the same day it is dated, or is it delivered the following day?

A. The sheet is delivered the following day. As I understand it, the quotations are phoned in by the dealers to the office of the Quotation Service daily at 11:00 o'clock or some time that they have set prior to 11:00 o'clock or whatever time it may be. The sheets are then printed and delivered the following day.

Q. And as I understand it then, with respect to all the [470] securities, reputable dealers may quote different prices for the same day; is that correct?

A. Yes, I would say dealers put in their markets for that day.

Q. Now these figures which you have read do not indicate actual transactions, do they?

A. No, they do not, sir.

Q. Now, do these figures indicate quantities of stock, in other words, for how many shares such figures relate to? A. No, sir, they do not.

Q. Now, calling your attention to the first one that you mentioned, July 24, 1953, I assume it is \$3 $\frac{1}{2}$ and \$4 $\frac{1}{2}$; is that correct?

A. That is the quotation on that day's sheet, yes, sir.

Q. Now, if a person went to a dealer and said on that day, "I have some shares to sell and what is the market?" Would the dealer quote him a price of \$3 $\frac{1}{2}$ or \$4 $\frac{1}{2}$?

(Testimony of Charles L. Margerum, Jr.)

A. I do not think he would quote him either price.

Q. Well, what do these figures indicate then?

A. These figures, in the industry's term, indicate the inside market. They are the prices between dealers.

Q. Then if a customer had stock to sell and went to this dealer, he probably would have been offered less than \$3½ per share? [471]

A. I would think so, based on these prices on that particular day that the dealer would mark it up or down, allowing for his profit on the transaction.

Q. And then if a customer went into a firm and said on this day of July 24, 1953, that he wanted to buy some shares of this stock, is it your expert opinion that the dealer would have charged a price in excess of \$4½ per share on July 24, 1953?

A. It is my opinion that he would charge a price of higher than \$4½.

Q. Is it your opinion that in charging the customer who wants to buy, a price in excess of \$4½ a share, that he would be trading at the actual market—the customer would be getting it at the price of the market that day?

A. I would say so if his markup is reasonable. If the markup and the price that he ultimately charged the customer bore a reasonable relationship to the sheet, I would say "yes."

Q. In other words, that would be a price in excess of \$4½ which would be, as you say, a reasonable

(Testimony of Charles L. Margerum, Jr.)

markup for the dealer? The customer in such case would be buying at the market price even though he was paying in excess of \$4½ a share on July 24th; is that correct? A. Yes, sir.

Q. Then taking the other side of the picture. The customer who was selling would be selling at the market even [472] although he was only receiving a price less than \$3½ on July 24th; is that correct?

A. That is correct. Incidentally, sir, on July 24th, according to this sheet, this is the only market that I know of.

Q. But you are referring now to the inside market? A. Correct.

Q. Between dealers and the price charged the customer differs from the inside market by the dealers' profit? A. That is right.

Q. Is that correct? A. Correct.

Q. And that if the one customer goes to the dealer and says he wants to buy and another customer comes in and says he wants to sell, and both tell the dealer that they want to transact their business in the market, the dealer will, nevertheless, and properly so, tell the people who are selling that the market is this and for the people who are buying, the market is this; is this correct?

A. That is correct, sir.

Q. And when he tells the seller that the market price is such and such for a selling customer, he will be quoting a different figure from the figure

(Testimony of Charles L. Margerum, Jr.)

which he gives to the customer who wants to buy at the market; is that your understanding?

A. Yes, sir, it is. [473]

Q. Now, with respect to the stock of the Terry Drilling Company, do you have any knowledge of how much markup the dealers were customarily making on the shares of that company?

A. No, I don't know with particular reference to that stock. I know what the custom of the industry is to take in the way of markup.

Q. Isn't there considerable difference between dealers as to what the markup is?

A. Not as to the maximum, I don't think.

Q. Does it also vary as to the number of shares that are available, the price?

A. Yes, sir. I think it would have some bearing on that.

Q. Now I notice that the inside price of the Terry Drilling Company stock, as quoted by you—

A. Not quoted by me.

Q. I mean, as read by you, I am sorry, I mis-spoke—had declined from a high of \$3½ on the bid side, from a low of \$2½; is it your understanding that prior to July 24th that the price of the Terry Drilling Company stock had been up higher than \$3½?

A. I don't know.

Q. You checked only between those dates?

A. That is right, sir. [474]

Mr. Sobieski: No further questions.

(Testimony of Charles L. Margerum, Jr.)

Redirect Examination

By Mr. Tucker:

Q. With reference to dealers' markup, which is, I understand, a differential between the figure here and the figure at which a dealer may sell to a customer; is that correct? A. Yes.

Q. What is a maximum reasonable markup?

Mr. Sobieski: I object to that, as he has testified that it varies according to the circumstances.

Mr. Tucker: He said within maximum limits.

Hearing Examiner: He may answer.

The Witness: 5% would be my answer to that question.

Q. (By Hearing Officer): Who determines that?

A. Well, I think it has been determined by the industry itself and they more or less, follow their practice. We, in our inspections, if we find a firm taking a markup that exceeds 5%, we make further inquiry as to the reason for the markup being over 5%. That 5% is the N.A.S.D. guide, so to speak.

Q. The N.A.S.D. do not limit it to 5%, do they?

A. No.

Q. Is it a guide more than anything else?

A. I think in some circumstances that it may be more [475] or less than 5%.

Q. It may be more or even less?

A. Yes. I might say that if it is more, we usually make additional inquiry as to the broker and get

(Testimony of Charles L. Margerum, Jr.)

some indication from him as to why it is more than 5%.

Q. You do have some more than 5%?

A. We have some.

Mr. Tucker: Have you concluded?

Hearing Examiner: Yes.

Q. (By Mr. Tucker): Well, what about a 20% markup?

A. If I were making the inspection and saw a markup of 20%, I would look into it very thoroughly.

Q. Do you find very many 20% markups?

A. No.

Q. What about 100% markup?

A. I think that is still more unusual.

Q. Have you ever found a 50% markup in any of your inspections that you can recall?

A. Offhand I cannot say, Mr. Tucker, but there may have been cases. I am not absolutely certain of that.

Q. Has the N.A.S.D. gone on record in any way about the amount of permissible markup?

Mr. Sobieski: I object to that as it isn't the best evidence. [476]

Trial Examiner: He has referred to the matter of 5% as being a guide.

Mr. Tucker: National Association of Securities Division.

Q. (By Mr. Tucker): And in buying securities from customers, when a dealer bids and buys—we have discussed that—strike that.

(Testimony of Charles L. Margerum, Jr.)

Mr. Tucker: No further questions.

Recross-Examination

By Mr. Sobieski:

Q. As I understand it, Mr. Margerum, going back to the July 24, 1953, figure as an example, where it quotes \$3½ and \$4½, was that quotation given by the same dealer—I mean, was it the same dealer who made the bid who made the ask?

A. Yes, sir.

Q. And I suppose in his indicated range of transactions with other dealers, he would act as a principal, would he, in such transactions?

A. Yes, sir, I would assume that he would.

Q. And the range then between \$3½ and \$4½ is more than 5%; is that not correct?

A. It is correct.

Mr. Sobieski: No further questions.

Hearing Examiner: What is your understanding as to what a principal in an agency transaction consists of? [477]

The Witness: I would say a principal in a transaction is where a dealer sells something to a customer that he himself owns, or he has on his shelf, or he buys something from a customer and puts it on his shelf. Briefly, he buys wholesale and sells retail.

An agency transaction is where a dealer acts in the capacity of a broker for a customer and as that customer's agent, charges a commission for his services.

(Testimony of Charles L. Margerum, Jr.)

Q. (By Mr. Sobieski): Sometimes dealers have been known to buy something at one price and then they find the market comes down; isn't that correct?

Hearing Examiner: Yes. I was just about to come to that. Suppose he bought at \$2.00 and the market goes up to \$10.00. What could he sell it at?

The Witness: \$10.00 plus his markup.

Hearing Examiner: What would be his markup?

The Witness: 5%.

Hearing Examiner: Suppose he bought at \$10.00 and it went down to \$2.00. What could he sell it at?

The Witness: \$2.00 plus his markup.

Hearing Examiner: Which is the riskier transaction?

The Witness: The riskier transaction is the one that fluctuates between \$2.00 and \$10.00 and the risk is where the broker acts as agent or in a principal transaction, has [478] completed the sale inside of the order before he buys the stock. There is a little risk involved there.

Hearing Examiner: Let me ask you one more question, Mr. Margerum.

The Witness: Yes, sir.

Hearing Examiner: Suppose a principal had bought at the figure of \$10.00 and the market went down to \$2.00 and thereby he sustained a very severe loss, is there any way by which he can—is there any situation that you know of by which he can justify, in another transaction, the customer recouping?

The Witness: I don't quite follow you, sir.

Hearing Examiner: Neither do I.

(Testimony of Charles L. Margerum, Jr.)

Mr. Sobieski: Well, let me ask you another question.

Hearing Examiner: I started out with one thing and I got waylaid on the second thought, but go ahead, Mr. Sobieski, you may ask your question.

Q. (By Mr. Sobieski): Well, on this October 27th figure you mentioned that the sheets carried quotations from three dealers which were all at slightly different combinations of prices?

A. That is right, sir. Just to keep it clear, Mr. Sobieski, that is October 30th I think I quoted from, not the 27th.

Q. Well, the one that had the three figures was [479] October 30th and not the 27th.

A. October 30th has two quotations. I do not see October 27th, but I may have given it to you, sir. I don't seem to have an October 27th sheet here, but I may be wrong. October 28th sheet. There are three quotations on October 28th.

These quotations on October 28th—that is right—one dealer shows it bid \$2 $\frac{3}{8}$ and offering it at \$2 $\frac{3}{4}$. One is bidding \$2 $\frac{1}{2}$ and offering it at \$2 $\frac{7}{8}$. The third dealer is bidding \$2 $\frac{1}{4}$ and offering it at \$2 $\frac{3}{4}$.

Q. Then, as I understand it, there are two variables. One is the amount of markup and the other is the quotation on which the markup is based, and in the example you have given on the bid side, for instance, the three reputable dealers each quoted three different prices on the bid side?

A. Correct.

(Testimony of Charles L. Margerum, Jr.)

Mr. Tucker: Would you read that question again, please? I want to be sure that the witness understood it.

(Question read.)

Mr. Tucker: I want to be sure that the witness understands that the three dealers have each quoted three prices on the bid side.

The Witness: That is correct.

Mr. Sobieski: I mean that there were three dealers each [480] quoting one price and the one price which each one quoted was different from the one price which the other dealers had quoted.

You still understood it, didn't you, Mr. Margerum?

The Witness: Yes, that is right.

Mr. Sobieski: No further questions.

Mr. Tucker: No further questions of Mr. Margerum.

Hearing Examiner: All right, Mr. Margerum, you are excused. [481]

* * *

JOHN PIERCE

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

Hearing Examiner: You have been sworn previously, is that right?

The Witness: That is right.

Direct Examination

By Mr. Sobieski: [503]

Q. Mr. Pierce, you are the respondent in this case? A. I am.

Q. And you are a resident of Las Vegas, Nevada? A. I am.

Q. And how long have you been a resident of Las Vegas, Nevada?

A. Approximately six years.

Q. During the last six years, approximately, you have been a continuous resident of Las Vegas, Nevada, is that correct? A. Yes, sir.

Q. Now, with respect to the transaction with Mr. Hayward, Earl Hayward, did you have a transaction with him? A. Yes, I did.

Q. And, calling your attention to the month of February, 1952, will you tell us what that transaction was and how it arose?

A. Well, Mr. Hayward called me and asked me if I—

Q. Just a minute.

Mr. Tucker: Mr. Examiner, I think he should

(Testimony of John Pierce.)

state what the conversation was and state who said what and also fix the time.

Mr. Sobieski: Very well.

Q. (By Mr. Sobieski): Do you remember the date closer than the month of [504] February in 1952? A. No, I don't.

Q. And he called you, did he call you by telephone? A. That is right.

Hearing Examiner: Now, we are in February, is this 1951 or 1952?

The Witness: 1952.

Q. (By Mr. Sobieski): And can you tell us the conversation?

A. Well, he asked if I could buy or dispose of a thousand shares of his race track stock and—

Q. When you say shares—

A. Units. Units of race track stock.

Q. And what did you tell him?

A. Well, I said that I didn't know. You see, the stock was erratic—well, one week there would be a rumor that—

Q. Was this something that you said to him?

A. Yes. One week there would be a rumor that the stock was hard to get because somebody had said that they would finish the race track and then the next week there would be a rumor that nobody would ever finish the race track and every other day there seemed to be a difference of opinion of whether the stock was desirable or not. However, I told him that I would buy the stock from him at

(Testimony of John Pierce.)

the rate of \$3 a share, a unit, for 200 units, and \$4 a unit for the balance of the 800 units [505]

And I clearly indicated to him in the conversation that—

Mr. Tucker: Now, just what did you say? I object on the ground that the witness said he indicated something.

The Witness: I said, "Earl, this is net to you." I said, "Is that all right with you?" And he said, "Yes."

Mr. Sobieski: Excuse me. Just a minute. May I see the exhibits?

Hearing Examiner: Off the record.

(Discussion off the record.)

Hearing Examiner: On the record.

Q. (By Mr. Sobieski): Calling your attention now to Commission's Exhibit No. 1, which is a photostat of a letter dated March 3, 1952, is that your signature at the bottom of your letter, Mr. Pierce? A. Yes, sir.

Q. And did you, on or about that date, transmit a check for \$600 as set forth in that letter?

A. Yes, I did.

Q. Now, then, calling your attention to Commission's Exhibit No. 2, this is a letter dated May 14, 1952, is that your signature at the bottom of the letter? A. Yes, it is.

Q. And also calling your attention to Commission's Exhibit No. 3, a check for \$800, dated May 14, 1952, payable to [506] Earl Hayward, is that a

(Testimony of John Pierce.)

photostatic copy of the check that accompanied that letter? A. Yes, it is.

Q. And I notice that this bears on it a number of bank stamps; could you tell us whether the check was paid or not?

A. This particular check wasn't paid and I therefore made a specific trip to Santa Barbara and paid him for the check in cash.

Q. \$800? A. \$800 which he testified to.

Q. Now, during this time, did you have any telephone conversations with Mr. Hayward in which this payment situation was discussed?

A. I did have some telephone conversations with him, but I imagine when I went to Santa Barbara—

Mr. Tucker: Just a minute. I object, your Honor, to what he imagines.

Hearing Examiner: Yes, I think we must confine it to what he knows.

Mr. Sobieski: Will you please just state your best recollection?

The Witness: My best recollection is that I went to Santa Barbara to give him the \$800 for this check; it was very nearly around that date and I discussed the balance of the money with him [507] there.

Mr. Tucker: Just a minute. The witness has said, "Around that date," and there has been no testimony as to any date.

Hearing Examiner: About the date of what?

The Witness: Of this check.

(Testimony of John Pierce.)

Hearing Examiner: What is the date of the check?

The Witness: May 14th.

Mr. Sobieski: I had previously stated what the date was.

Q. (By Mr. Sobieski): Now, at that time, did you have a discussion with Mr. Hayward?

A. Yes, I did.

Q. And who was present?

A. I believe that Mr. Hayward and myself were present.

Q. And what is your best recollection as to what was said by you and by Mr. Hayward in this discussion?

A. I explained to Earl that I wanted to borrow the balance of the money that he had coming to him and I asked him if it would be possible for me to do that and he said that it would be all right.

Hearing Examiner: How much was that balance, Mr. Pierce? Do you recall that?

The Witness: \$2,400.

Hearing Examiner: That was what was left after you paid him the \$800 in cash?

The Witness: \$800 and \$600. [508]

* * *

Q. (By Mr. Sobieski): Mr. Pierce, with reference to the financial statement which is attached to your application for registration, the item of indebtedness shows under the heading of "Miscella-

(Testimony of John Pierce.)

neous," the sum of \$500. Do you intend to file an amendment to your application?

A. Yes, I do, as soon as we get through with the hearing.

Q. And the correct figure should be approximately \$3,000, is that correct? A. Yes, sir.

Q. But you are going to make a very careful examination before the application is filed in order to correct that item; is that correct?

A. That is true.

Hearing Examiner: You mean before the amendment is filed?

Mr. Sobieski: Excuse me. Yes, that is true.

Q. (By Mr. Sobieski): And does the application state the value, I mean does the financial statement state the value of the lease that you mailed to Mr. Fox? A. No, it doesn't. [566]

Q. Do you have, or do you know what is the value of that property?

A. The adjacent property is now selling for \$2,000 an acre, which would place that lease at approximately \$10,000.

Q. And there are five acres? A. Yes, sir.

Q. And you consider this property, do you, do you consider this property as having an equal value with that of the other properties which are sold, the adjacent properties, for \$2,000 an acre in the vicinity?

A. That is generally what the real estate brokers reach in their evaluation of property, of the adjacent properties, that is what they sell at.

(Testimony of John Pierce.)

Q. And that is the basis upon which you have stated this value; is that correct? A. Yes.

Hearing Examiner: And this is what kind of lease, a lease of what?

The Witness: Five acres of land in Las Vegas that I homesteaded in 1950 and in the past four years it has reached that point now.

Hearing Examiner: Is it just plain land?

The Witness: Yes, sir.

Hearing Examiner: How far away is it, for instance, from the center of activities in Las [567] Vegas?

The Witness: Well—

Mr. Sobieski: I think I can clarify that by a question or two, your Honor.

Q. (By Mr. Sobieski): How far from the Strip is this land?

A. This land is approximately one mile from the Strip, but that does not mean that it is off of the center of activity because it is only about half a mile from a very popular road called Paradise Valley Road and 600 feet from another popular road which is called Flamingo Road.

Hearing Examiner: What I mean is, is there building activity progressing out in that direction?

The Witness: Yes. In fact, I am hemmed in between the race track and a very popular ranch called the Bar W Ranch which is owned by Brian Foy, the movie producer.

Hearing Examiner: And how long have you had this land?

(Testimony of John Pierce.)

The Witness: Since 1950.

Hearing Examiner: Since 1950?

The Witness: Yes, sir.

Hearing Examiner: And that is the one that you sent over to Mr. Fox, apparently as security or something of that kind?

The Witness: That is right.

Hearing Examiner: Have you ever borrowed any money on that lease?

The Witness: No. [568]

Hearing Examiner: In other words, it is unencumbered?

The Witness: Absolutely so.

Hearing Examiner: Off the record.

(Discussion off the record.)

Hearing Examiner: On the record.

Q. (By Mr. Sobieski): With reference to your statement to Miss Kendall, Mr. Pierce, about those fourplexes, have you been engaged in business activity in connection with construction in Nevada?

A. Yes, I have. I am associated with a licensed and bonded contractor in Las Vegas.

Q. And, during the past three or four years, have you engaged in business in connection with the construction industry?

A. I won't limit myself to the construction industry alone. I have done almost everything from raising money for mortgages to forming partnerships and doing construction improvements and interesting people in percentages in limited partner-

(Testimony of John Pierce.)

ships—just anything that will earn a commission or a profit.

Q. Now, Mr. Pierce, how important is it to you to receive favorable action on your application for registration with the Securities and Exchange Commission?

A. It is extremely important and it should be extremely obvious. The average individual can get an application approved [569] with just a three-cent stamp and I think that I have gone a thousand times further than that. I have, in the years that I have been in Las Vegas, I have established a fairly good reputation and made some good contacts and there is no question that I can use my registration honestly and logically to make a permanent business of it.

Q. And do you desire, at this time, to be registered and to comply with the applicable regulations of the Securities and Exchange Commission?

A. Yes, I do.

Q. And would a denial work a serious financial hardship on you in your opinion?

A. In my opinion, it would, since people are associating me now with some successful ventures in Las Vegas and they seem to wilfully come to me and contact me on proposed propositions that they intend to go into.

Q. And by that you are referring to new ventures? A. Yes.

Q. And by that you mean ventures that are now in the planning stage? A. That is right.

(Testimony of John Pierce.)

Hearing Examiner: Mr. Pierce, how old are you—that is not just curiosity because it has some meaning in terms of your application.

The Witness: 37 years old. [570]

Hearing Examiner: 37 years old. You do not look it. And you have been in Las Vegas for six years, have you?

The Witness: Yes, sir.

Hearing Examiner: Were you ever in the business of selling securities before you came out to Las Vegas?

The Witness: No, never; the first time I ever sold securities was for a registered broker, Mr. La-Fortune, in Las Vegas for the race track.

Hearing Examiner: Now, and this question is not just curiosity by any means, but I will ask you this: Have you ever been involved in any proceedings before the Securities and Exchange Commission before?

The Witness: No, sir.

Mr. Sobieski: That is other than the proceedings that are in progress now.

The Witness: That is right.

Hearing Examiner: These are all encompassed apparently in this proceeding out here. Do you have anything further?

Mr. Sobieski: I have a couple of more questions.

Hearing Examiner: You may proceed.

Q. (By Mr. Sobieski): Now, with respect to your withdrawal of the previous application for registration, what was that?

(Testimony of John Pierce.)

Hearing Examiner: I would say that this is absolutely under the Jones case and I do not think that he has to explain [571] that.

Mr. Sobieski: Well, according to the evidence, I think that some of the evidence would show that some of the people that have been subpoenaed had requested him to withdraw it.

Hearing Examiner: You may go ahead, Mr. Sobieski, if you care to. I just wanted to point out that the Jones case gives him an absolute right to withdraw without any questions being asked with respect to the application for registration.

Mr. Sobieski: Well, that has been introduced in evidence and I would like to bring up that point, your Honor.

Hearing Examiner: You may go ahead, if you care to.

Q. (By Mr. Sobieski): With respect to your withdrawal of the application, what was the reason that you withdrew it at that time?

Hearing Examiner: This is the previous application?

Mr. Sobieski: The previous application which has been introduced in evidence and I do not know which exhibit it was but I think that there was only one.

Mr. Tucker: That would be Exhibit No. 30.

Hearing Examiner: All right.

The Witness: Well, regardless of how famous and fabulous Las Vegas is, I will say this: That it

(Testimony of John Pierce.)

is still a small town. I had and I still have a number of very valuable contacts in that town that took me years to build up and with indiscriminate subpoenas shooting all around the town, to hotel owners and large [572] club owners and bankers and accountants and anybody that may have ever said hello to me on the street, well, I was requested by some of the influential people to withdraw my application and I heartily agreed at that time.

Mr. Sobieski: In other words, you were requested by one or more of the people who had been subpoenaed as witnesses to withdraw it?

The Witness: That is right. I was reluctant but I had to, I should say.

Cross-Examination

By Mr. Tucker:

Q. In connection with the indiscriminate subpoenas that you have referred to, Mr. Pierce, were there any that came to your attention whose testimony or evidence hasn't been brought out in one way or another by stipulation or otherwise in this proceeding?

A. When I said indiscriminate, I meant, well, I had agreed to stipulate to the same things that we stipulated to at this hearing but, regardless of my agreement, the subpoenas went out anyway. As a matter of fact, the last subpoena was received the day that I withdrew my registration by telegram, which was the day before the hearing was scheduled.

(Testimony of John Pierce.)

Q. Mr. Pierce, isn't it a fact that the conference over a question of whether stipulations could be received or reached was scheduled between me and Mr. Sobieski for Monday, August 3, [573] the day before the hearing was to commence, which was August the 4th?

Hearing Examiner: I think that we are getting over into a field that hasn't any relation, so to speak, to the merits of the case.

Mr. Tucker: It is argumentative.

Q. (By Mr. Tucker): Now, do I understand you correctly, that one of the reasons why you want this registration is because people are coming to you with matters of a sort that would require a registration to handle?

A. Yes, some of the matters require registration and some don't and I don't hope to be held back by not having a registration.

Q. And these people that have come to you, were these matters, or would these matters, they have come wilfully to you?

Hearing Examiner: Wilfully—well, that is a term as used by Mr. Pierce. But I suppose, did you mean deliberately came to you because they have confidence in you or because you have acquired some skill and reputation in their belief?

The Witness: That is right.

Mr. Tucker: May I ask that this document which has been referred to previously by description, being the lease previously described in the record, may

(Testimony of John Pierce.)

I ask that that now be marked as Commission's Exhibit next in order? [574]

Hearing Examiner: Are you offering that document physically in evidence? That document may have value.

Mr. Tucker: I will ask leave to withdraw it for the purpose of making a photostatic copy of it.

Hearing Examiner: Well, don't mark that. If that has value, a copy should be used in lieu thereof.

Mr. Tucker: That is the manner in which I wish to offer it. The number will be Commission's Exhibit CX No. 35.

Hearing Examiner: All right. It will be identified as Commission's Exhibit No. 35.

(The document above referred to was marked for identification as Commission's Exhibit No. CX-35.)

Q. (By Mr. Tucker): Are you at all familiar with this document, Mr. Pierce—the lease that you told about as having been sent to Mr. Fox as security?

A. I am generally speaking, I am familiar with it. I haven't read it all, I haven't read all of the fine print, but it is a common document that we use all over the United States.

Q. Now, it provides in here that the lessee agrees to construct upon the land to the satisfaction of the regional administrator of the Bureau of Land Management improvements appropriate for the use for which the lease is issued and that plans may be sub-

(Testimony of John Pierce.)

mitted to the Regional Administrator for approval in advance of construction. It also says that the land is leased [575] to be used for homesite purposes only. What improvements have you put on these lands?

A. I have put no improvements on it and I am very happy that I haven't, because they just passed a new ruling in the Bureau of the Interior that all that is required to prove up the land and claim ownership is to drill a well and that would only run about \$250.

Hearing Examiner: A well for what?

The Witness: For water. They call it the third option.

Mr. Tucker: I will object to the answer as being hearsay.

Hearing Examiner: No, he speaks apparently whereof he knows, whether or not he knows or not, he speaks as if he knows.

Mr. Dotson: If the Court please, I could make a statement.

Hearing Examiner: If Mr. Dotson wishes, he could do so.

Mr. Dotson: In Clark County, there has been an organization formed called the Home Siters League, or something of that nature, and there are some thousand of these same people who have acquired the small tract parcels under the same type of lease with an option to either purchase—I believe that is the terminology in this lease—that upon certain improvements being made they will acquire this option.

(Testimony of John Pierce.)

However, through the efforts of this Home Siters organization, they have required [576] additional sanctions and, as I understand it, there are three choices:

One is that improvements may be made and the land acquired in that manner with a small additional payment per acre.

The second is that they can drill a well, and I believe that there is a small additional payment, just what it is, I couldn't state and I would rather be accurate or not state it at all.

And the other one is that the land may be purchased outright on an agreed statement of value from the Bureau of Land Management, coming out of the San Francisco regional office there.

This is something that has only happened in the last, well, I believe it has been just since July and it has been done through the efforts of this particular group, together with the efforts of the congressmen and senators of our state and also through the Bureau of the Department of the Interior.

The Witness: And I might add that there are a number of similar cases where the homesteaded land later became very valuable property right on the strip.

Hearing Examiner: Now, you indicated, as I recall, something like \$2,000 per acre which was the going price for similar land; is that correct?

The Witness: Yes. The adjacent lands are selling for \$2,000 an acre and that is land that is right abutting mine. [577]

(Testimony of John Pierce.)

Hearing Examiner: Do you know, of your own knowledge, what it is being sold for?

The Witness: Yes, \$2,000 an acre.

Hearing Examiner: I mean, for what purpose?

The Witness: Oh, for private dwellings mostly, and that sort of thing.

Hearing Examiner: Well, I don't know anything about that country, but I vision it as being out where the sand fleas are; now, I may be wrong.

The Witness: Well, that is, or that was Las Vegas several years ago, all right.

Hearing Examiner: Oh, I see. As I say, I visioned it as sand flea country. And I will say that that is all the more reason why I should get out to see just exactly what exists around Las Vegas.

Mr. Dotson: It might be pointed out to the Court that of my own knowledge, some of that same five-acre tract was sold on what we call Highway 91 and just beyond the Strip for \$300 a front foot. And, of course, that is only a mile or two from where John's property is.

Hearing Examiner: You have no roads near your place?

The Witness: Yes, I am just 600 feet off of the road.

Hearing Examiner: What kind of road?

The Witness: A paved road, a cross-county road that goes from Highway 91 to Boulder Highway which is another main artery. [578]

Hearing Examiner: This road that is going

(Testimony of John Pierce.)

through your property doesn't lead to Death Valley, does it?

The Witness: No, sir.

Mr. Dotson: It is in an area where they have been selling improved property within a half of a mile of John's property; it is in an area where half an acre to three-quarters of an acre is going anywhere from \$1,800 to \$2,500 an acre, depending on the location to a particular corner and that sort of thing.

Hearing Examiner: And that is for building purposes?

Mr. Dotson: Well, actually, very little building, but the speculation of land is terrific and there are some houses and homes that are being built.

Hearing Examiner: Well, assuming and without conceding anything, Mr. Staff Counsel, that the property is worth \$10,000, how much would that leave, how much would you claim that that would leave the financial statement deficient?

Mr. Tucker: Well, it would still be the error in the statement of the liabilities, an error on the liabilities side. It is not a question of ratio; it is the question of whether or not the liabilities were properly stated.

Hearing Examiner: Well, you mean as they exist now?

Mr. Tucker: As they existed at the time that the statement was made.

Hearing Examiner: That is right, but I say that if per chance Mr. Pierce had this property that is worth somewhere in [579] the neighborhood of what

(Testimony of John Pierce.)

he says is the going price of other property nearby is demanding and if this had been included in the financial statement and if it is included in the amendment to the application, would that render the defect negligible?

Mr. Tucker: It seems to me that we have another defect and that is concealment of assets, failure to include an asset that is worth \$10,000.

Hearing Examiner: Well, it seems to be working in the reverse, so to speak. Now, I don't know. I am just trying to get your views.

Mr. Pierce, why didn't you include this lease as an asset?

The Witness: It was not intentional. It was inadvertent. The same thing goes for those personal obligations that I had, none of them were intentional.

Hearing Examiner: No, but—well, what I mean—you file your statement and you assumed the responsibility. Now, you had this lease which has presumably been assigned to Mr. Fox.

The Witness: It hasn't been assigned. He is holding it as security.

Hearing Examiner: How much do you owe him?

The Witness: \$750.

Hearing Examiner: Well, you go ahead, Mr. Tucker.

The Witness: It is obvious that I had rather have the [580] lease and I certainly will have it.

Hearing Examiner: Well, you see, you simply file, your filings with the commission are tested on

(Testimony of John Pierce.)

the basis of what you say and that is all the Commission apparently knows anything about.

But would you say, Mr. Staff Counsel, would you contend that there was a serious dereliction of duty if he had a lease of \$10,000 and didn't set it forth in his financial statement?

Mr. Tucker: It is my understanding of the regulations which requires the filing of a financial statement that it requires the filing of a reasonably accurate statement and, if an asset worth \$10,000 is omitted from it, it is a serious dereliction and if the liabilities that are unstated amount to \$2,500, that is a serious dereliction in the supplying of the information in the statement that is required to be filed with the Commission.

Hearing Examiner: Well, I wouldn't know, but I will study those applicable rules.

Mr. Tucker: It is our position that an accurate statement is required.

Hearing Examiner: I thought that the Commission was primarily concerned with setting forth all of the amounts that the respondent owed primarily. If his financial statement disclosed accurately the amount that he owed together with a reasonable statement of his worth, how could one be prejudiced by [581] not showing that his worth was greater, for instance?

Mr. Tucker: The availability of assets is one feature of a man's credit in doing business and one purpose of the financial statement is to disclose all

(Testimony of John Pierce.)

of these assets in case that it is necessary to have recourse to them for any purpose.

Hearing Examiner: Of course, at the time that this statement was made apparently this lease was then deposited with someone else as security or collateral. I think that it has been said that it was put up as collateral. Of course, I don't know what it is or what the legal contemplation was but apparently he didn't conceive of it as an asset at the time since it was hypothecated, so to speak, with Mr. Fox.

I don't know. I am just trying to raise some points here.

Mr. Tucker: Well, there are other inferences that could be drawn from his failure to list it.

Hearing Examiner: Well, if I am willing to deal with someone who shows a net credit, net assets of a thousand dollars, am I prejudiced if that fellow turns out to have \$20,000?

Mr. Tucker: Perhaps not in that particular situation. But in the event that you must have recourse to enforce an obligation, that would present another situation.

Hearing Examiner: That is a second point, Mr. Tucker. That is going further and that is not answering my question. My question simply is if I am willing to deal with someone who [582] shows a thousand dollars net assets, it would seem that I would be more than willing to deal with him if he showed \$20,000.

Mr. Tucker: Well, there is another situation,

(Testimony of John Pierce.)

too, as far as this lease is concerned, and that is that at this point it is nothing but a lease. It was not assigned to Mr. Fox.

Hearing Examiner: Well, possession is nine-tenths of the law, as is sometimes said, you know. Mr. Fox had it in his possession and Mr. Fox, if he had wanted to become determined about it, he could have held fast to it as long as he wanted to until some court proceedings may have been instituted to recover it and I am not sure that he could have even recovered it without Mr. Fox making some other arrangements.

Now, the only thing is the Securities and Exchange Commission, as is not true of every Federal agency, or apparently so, they are always leaning over backward to be absolutely fair, as I know that you want to be.

We have no business taking advantage of anybody here when the Securities and Exchange Commission is known for its fairness as well as its firmness. This is a situation that must be appraised on its face. Here we have testimony of its value and nothing indicating otherwise. It may not be worth 50 cents, this lease, but the record discloses that it is worth something.

Mr. Tucker: Well, we have some statements—I won't concede that we have much testimony about the value of this [583] lease—but we have some statements about the value of some lands around it.

Hearing Examiner: Well, he said that the lands adjacent to it were worth a certain amount and we

(Testimony of John Pierce.)

also have an interesting statement from counsel, Mr. Dotson, who impresses me as knowing something about the situation in that part of the country, and we always listen to the statements of counsel very carefully, the statements of lawyers, whether they are testifying or not because, as you know, they are officers of the Court to which they are accredited.

I am just raising some of these points. You may go ahead, Mr. Tucker.

Q. (By Mr. Tucker): Mr. Pierce, it is a fact, is it not, that no assignment of this lease, Commission's Exhibit No. 35, to Mr. Fox has been executed?

Mr. Sobieski: I will object to the question as calling for a conclusion of the witness. I think that the document in evidence shows what the transaction was.

Hearing Examiner: Well, actually, whether the document is assigned or not, in the eyes of the law, if it is handed over to the person to be benefited, he thereafter or immediately acquires a right of a very definite kind, a very definite kind of right.

Mr. Tucker: Well, he has possessed the right, perhaps an [584] equitable right to an assignment.

Hearing Examiner: That is correct. The transferee has something of value.

Mr. Sobieski: Is that your ruling on my objection?

Hearing Examiner: Off the record.

(Testimony of John Pierce.)

(Discussion off the record.)

Hearing Examiner: On the record.

Will you read the question?

(The question was read by the Reporter.)

Hearing Examiner: I think that the respondent can answer that question. He has shown knowledge and wisdom. He has shown that he has an understanding of the meaning of such legal terms and I think that he could answer that all right.

The Witness: To date, there has been no legal assignment of this lease to Mr. Fox.

Hearing Examiner: What provision was made on the document for assignment of assets?

The Witness: I would like Mr. Dotson to answer as to the procedures that they use in Las Vegas and have been continuously using, transferring and assigning these leases.

Mr. Dotson: I wonder if we could go off the record. This is a rather exclusive type of arrangement and I would prefer my comments to be off of the record.

Hearing Examiner: Well, we can go off the record first.

(Discussion off the record.) [585]

Hearing Examiner: On the record.

Mr. Tucker: You have referred to the fact that there is some evidence as to a value in this lease that has been referred to as Exhibit No. 35 and I

might comment that the only evidence of that that we consider in any way competent would be under the theory that an owner can always testify as to what he believes to be the value of his own land.

Hearing Examiner: In this case, the owner has more knowledge than you or I have and we also have a statement from Mr. Dotson, Mr. Tucker, and while it is not evidence, I would use that if it became necessary.

Mr. Tucker: Well, Mr. Dotson does not represent the respondent.

Hearing Examiner: I am sorry, but Mr. Dotson is assisting counsel and he is from that area and, further, he has impressed me with his knowledge of the situation in general insofar as the area is concerned and the tracts of land, insofar as they are concerned.

Mr. Tucker: On this particular feature of the case, staff counsel has no information and it may be necessary that we may have to request an extension of time to make our own check.

Mr. Dotson: Wouldn't that be obviated by the filing of an amendment to the financial statement?

Hearing Examiner: Of course, all that I have before me at [586] this time is the financial statement.

Mr. Dotson: Assuming that that would be done prior to the time that the extension was requested.

Hearing Examiner: It still would not be in the record of this proceeding.

Mr. Tucker: I do not think that the filing of an amended financial statement would correct the de-

flect after the Commission by its raising of the issues has directed attention to the deficiencies. I do not think it corrects it.

Hearing Examiner: No, but the question right now is this: Is there a deficiency if the lease has value? The deficiency, you contend, exists by virtue of the balanced statements in the financial statement and I can understand that those statements would need reshuffling and rearranging and, to that extent, if there is any deficiency situation, it would be in that way.

Now, Mr. Tucker, of course, my statements are not to be regarded as prejudging in any respect here. But I am interested in this possible \$10,000 more or less value attached to the lease.

Mr. Tucker: As far as the financial statement itself is concerned and the statements of liabilities, we have collateral facts of record about statements made to Mr. Burr of the Securities and Exchange Commission about certain liabilities having been extinguished when in fact they were not extinguished [587] and not reflected in the financial statement that was submitted at the same time.

So, it goes beyond—I think it goes beyond a mere question of net worth which is the matter, I believe, that you are specifically focusing on.

Hearing Examiner: I must admit that I have been concentrating primarily on net worth. I will listen to any arguments on either side at the proper time on that question.

Mr. Sobieski: Well, I would like to observe, your Honor, that under the item "miscellaneous"

on the balance sheet, that that should have been \$3,000 instead of \$500 in liabilities and the matter of this lease, it should have been included as the assets.

However, because a man leaves a miscellaneous amount out, he might very well still be in a solvent financial condition. I think that they are straining at a net to draw a sinister motive from that.

I think that the financial statement here, well, I think the matter of how much the obligations are and how much his net worth is, if there is error, I think that those are just inadvertent. After all, he left both of them out. And, therefore, I think that it is trying to make too much out of it, a mountain out of a molehill and I also think that the matter should be and it will be corrected.

As your Honor knows, we have been very busy during the [588] last few days and that is the reason that it has not been corrected previously.

Hearing Examiner: We have been very busy actually for the last ten days. All right, at the proper time, Mr. Sobieski, you will, of course, brief and urge that point.

Mr. Tucker: I don't know whether the record shows that we have offered this Exhibit No. 35 subject to withdrawal. I know that we discussed it. In any event, I now offer Exhibit No. 35.

Hearing Examiner: And what is Exhibit 35?

Mr. Tucker: Being the lease referred to, the lease about which we have been talking in the last five or ten minutes.

Mr. Sobieski: I have no objection. May I make the suggestion, however, that the Reporter not place any marks on this lease and let the Reporter's notation be placed on a separate sheet of paper which can be clipped to this lease and to the photostat when it is prepared. [589]

* * *

Mr. Dotson: Very well. In my practice, I represent two or three construction organizations from time to time, one constantly, and also have many friends engaged in the real estate business.

One, in particular, who deals in property in the Paradise Valley area, which is the section commonly referred to as Las Vegas, extending south from Las Vegas, from about the race track on out to maybe ten or fifteen miles to the southern part of Las Vegas.

I run into him on many occasions and we have discussed this and he has indicated to me the price at which he sells the property upon the transfer of fee title and in making any statement concerning the value of this land, it would have to be considered with these facts in mind, what is necessary to bring this property of Mr. Pierce into a fee title and the cost of this particular function and deduct that from the value of the land, and then you have the approximate value of Mr. Pierce's interest or that interest which may ripen.

Of my own personal knowledge, in an area in the next section south of Mr. Pierce's property, I was discussing the purchase of an acre of land for \$2,-

500.00. The acre abutted the gravel street and had no other improvements, no power line, no water. That is from my own personal experience.

That is in section 36 of the same range of township. [635]

In my practice, I have an assistant named Dale Cook who handles a great deal of real estate transactions and also represents the Title Company, and naturally over a period of some years, some two years, I have been associated with him in these matters from time to time.

And this is hearsay. But in a section which would be approximately four sections further out from Las Vegas and three section over to the west, there was a transaction involving a five acre tract. This particular tract abutted Highway 91.

It involved a frontage on the highway which sold for \$3,000.00 of front feet, so that the fact which, I think, can pretty well be generally stated with some exceptions, is that these small tract leases, while not transferable as simply as a grant bargain and sale Deed, can be transferred still, and they are dealt in, in Las Vegas. That is the five acre and two and a half acre tracts.

There are several types. There is also the Pittman Act which allows you to pick up 160 acres in some areas, but of course, none of that is right adjacent to Las Vegas. Some of it is out forty or fifty miles.

Now, that particular tract based upon the front footage price, which is on Highway 91, some five sections south of the Flamingo, which would be five miles. That is out of Las Vegas some distance;

five miles from the Flamingo and the [636] Flamingo is some four miles from the center of the town.

Hearing Examiner: What is the "Flamingo"?

Mr. Dotson: The "Flamingo Hotel" which is the first large hotel as you go into Las Vegas. That probably sold for a price of something like \$15,000.00 subject, of course, to the transfer of the interest according to the procedure which I stated the other day.

The agreement to withdraw is sent into the Bureau of Land Management with a subsequent application of the party who might otherwise be called "the purchaser," the relinquishment stating that they wish to withdraw in favor of the purchaser.

Hearing Examiner: Of course, Mr. Pierce's land is not on the highway?

Mr. Dotson: No, it isn't but it is in an area where you could buy it at \$1,500.00 an acre and hope to make a profit.

Hearing Examiner: You are familiar with Mr. Pierce's land?

Mr. Dotson: Yes, I know where it is. In observing the map which Mr. Tucker has put in evidence, I might state that there is now a gravel avenue coming out of Las Vegas called "Eastern Avenue" which is a county road. Then three sections down, there is Bond Road. That is maintained in conversation around Las Vegas to be a main thoroughfare in the development of this Paradise Valley area. [637]

Hearing Examiner: Where does Paradise Valley lead to, Mr. Dotson?

Mr. Dotson: The east avenue comes in at the intersection of Fremont and Charleston Boulevard, which are the two main streets in Las Vegas. It comes south directly into Paradise Valley.

This, according to the map, is the road going to Boulder City and this is Henderson out in that area. This is Highway 91 which comes south from Los Angeles. This area in here is what they call "Paradise Valley." I don't know the exact limitations as far as the boundaries go.

Hearing Examiner: That is between Boulder Highway and the Los Angeles principal highway and about how far from the city?

Mr. Dotson: The boundary of the race track would be about two and a half miles from Fremont and Main Street, according to this map, so this is the edge of the race track property.

In this area south of the race track there is quite a large development. There are several private homes, the value of which would exceed \$15,000.00. It isn't a small home but it isn't a large home.

Then Mr. Pierce's property is two sections over from the race track and about two down.

Hearing Examiner: That is two miles over and two miles [638] down in a southerly direction?

Mr. Dotson: Yes. The other property I spoke of the other day, is less than a mile from Mr. Pierce's property. It just shows the development of the property. I think whether the ranch is there or not the property would have the same price.

I intended to buy some property out there myself but I have not been able to find anything I want.

Hearing Examiner: Well, now, how much would it cost Mr. Pierce to sell a fee title to that?

Mr. Dotson: May I see the lease?

Mr. Pierce: May I answer the question?

Hearing Examiner: No, I am asking your attorney now. We can take your statement at a later time. Why, if Mr. Pierce knows what it would cost to develop this into a fee interest for transfer or sale, he could state it.

Mr. Dotson: Well, before he states that, I might state that there are three methods under which you can obtain the fee title to this small tract land. One, there is an acre rental which must be paid regardless and during the period the lease extends, you can construct what they call a homestead dwelling, and there are contractors who will build that for \$1,250.00 on the property or lease.

After you have done that, you get the approval of the Bureau of Land Management. They come down and inspect that, [639] and upon that they sell the land to you. Generally speaking, the price per acre is stated, and I know of some priced at \$50.00 an acre.

Hearing Examiner: What does that mean?

Mr. Dotson: That would be the price after you put the construction on.

Hearing Examiner: To whom is that paid?

Mr. Dotson: To the Government. Then you get a patent.

Hearing Examiner: What is the difference between a patent and a fee?

Mr. Dotson: The patent is the absolute title given by the Government. But since this lease was executed, as I explained the other day, there have been these other options that have come up. The Government will establish through the San Francisco office a purchase price at which you can buy this land and nothing else need be done.

Then there is this additional order they call a third option by the homesteaders, which allows you to drill a well on the property. I don't know if there is an additional price or not.

Congressman Young was very helpful to the Homesteaders and I think he helped them to work out something.

Mr. Pierce: There is 100 feet and at \$3.00 a foot, it is \$300.00 and the whole deal would cost me \$550.00 to get the patent for the land. [640]

Hearing Examiner: How long have you had this?

Mr. Pierce: Since 1950.

Hearing Examiner: It isn't in default or anything?

Mr. Pierce: No, it will not be in default until December of 1955.

Hearing Examiner: All right. Anything further? [641]

[Endorsed]: No. 14901. United States Court of Appeals for the Ninth Circuit. John Pierce, Petitioner, vs. Securities and Exchange Commission, Respondent. Transcript of the Record. Petition to Review an Order of the Securities and Exchange Commission.

Filed: November 16, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14901

JOHN PIERCE,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITION FOR REVIEW OF ORDER DENYING APPLICATION FOR REGISTRATION AS A BROKER AND DEALER

To the Honorable the United States Court of Appeals for the Ninth Circuit:

The petition of John Pierce respectfully shows:

1. This Petition for Review is filed pursuant to the provisions of Section 25 (a) of the Securities Exchange Act of 1934 (15 U. S. C. 78 y).

2. Your Petitioner resides in and has his principal place of business at Las Vegas, Nevada, within the Ninth Circuit.

3. On October 28, 1954, your petitioner filed with the Securities and Exchange Commission an application for registration as a broker and dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934 (15 U. S. C. 78 (o) (b)). On

November 5, 1954, the Securities and Exchange Commission ordered that a hearing be held, pursuant to said Sec. 15 (b), on the question of denial of registration to applicant.

4. Thereafter, a hearing was held before a Hearing Examiner at Los Angeles, California, in November and December 1954 pursuant to said order. At said hearing it was stipulated that the Commission might make an order postponing the effectiveness of your petitioner's application for registration. Such order was made.

5. On February 8, 1955, the Hearing Examiner filed in said proceeding a 44 page Recommended Decision which recommended that your petitioner's application for registration as a broker and dealer become effective forthwith.

6. Your petitioner requested the Securities and Exchange Commission to adopt the Recommended Decision of the Hearing Examiner who heard the evidence.

7. On August 16, 1955, the Securities and Exchange Commission adopted a 9 page Findings and Opinion which did not discuss the Recommended Decision of its Hearing Examiner, and entered an order denying your petitioner's application for registration as a broker and dealer.

8. A Petition for Rehearing has been filed by your Petitioner but has not been acted upon by the Commission.

9. Petitioner seeks review by this Court of the order of the Securities and Exchange Commission dated August 16, 1955, denying his application for registration as a broker and dealer. Petitioner is an aggrieved party within the meaning of Section 25 (a) of the Securities Exchange Act of 1934 and alleges (and he urged to the Commission) that the order sought to be reviewed is contrary to law, is based on an opinion which misstates the facts developed in the record, which disregards the findings of the Hearing Examiner based on the evidence, and that the order is not supported by the evidence. The penalty imposed on your applicant, who has already been suspended over ten months, is cruel, unusual, and excessive. The Commission's Opinion and Order denying broker and dealer registration is unreasonable and arbitrary and does not give the weight to the Recommended Decision of the Hearing Examiner (favorable to your Petitioner) required by law and the decisions such as Universal Camera Co. vs. N. L. R. B., 340 U. S. 474, 487-496.

No previous application for the relief sought in this petition has been made to any court or judge.

Wherefore your Petitioner prays that this Court review said order of the Securities and Exchange Commission dated August 16, 1955, and order that it be set aside so far as it denies your petitioner's application for registration as a broker and dealer pursuant to Sec. 15 (b) of the Securities Exchange Act of 1934.

Respectfully submitted,

JOHN G. SOBIESKI,

DOUGLAS L. HATCH,

EDWIN J. DOTSON,

By /s/ JOHN G. SOBIESKI,

Attorneys for Petitioner.

Duly Verified.

[Endorsed]: Filed October 14, 1955.

[Title of Court of Appeals and Cause.]

PETITIONER'S STATEMENT OF POINTS

To the Honorable the United States Court of Appeals for the Ninth Circuit:

Pursuant to the provisions of Rule 17 (6) the Petitioner, John Pierce, hereby files with the Court his statement of the points on which he intends to rely and designation of the record material to the consideration thereof.

I.

Points on Which Petitioner Intends to Rely

- a. The order of the Commission issued August 16, 1955, denying Petitioner's application for registration as a broker-dealer is based upon findings which are contrary to the record and are not supported by the evidence. The findings to which Petitioner specifically objects are those relating to his

transactions with Mr. "H." and those relating to his financial statement. Petitioner concedes that he did act as a broker-dealer while unregistered and now desires to correct that.

b. Said order does not give proper weight, as required by law, to the Recommended Decision of the Hearing Examiner who heard the evidence, which Recommended Decision was favorable to Petitioner.

c. The penalty imposed upon Petitioner, who has already been denied a right to earn a living as a broker and dealer for a period of over eleven months is cruel, unusual, and excessive.

Respectfully submitted,

JOHN G. SOBIESKI,

DOUGLAS L. HATCH,

EDWIN J. DOTSON,

By /s/ JOHN G. SOBIESKI,
Attorneys for Petitioner.

[Endorsed]: Filed November 22, 1955.